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FEB 3 2012

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February 3, 2012

**FILED**

FEB 03 2012

**SURFACE  
TRANSPORTATION BOARD**

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

RE: Finance Docket No. 35592, *RailAmerica, Inc., Palm Beach Holding, Inc.,  
RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC,  
and RR Acquisition Holding, LLC—Control Exemption—Marquette Rail, LLC*

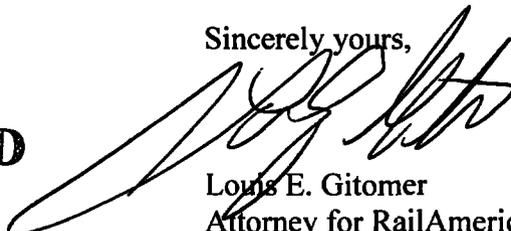
Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption by RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC (the "Buyers") to acquire control of Marquette Rail, LLC. In the alternative, the Buyers respectfully request the Board to treat this pleading as a Petition for Exemption if the Board determines that the proposed transaction does not qualify for the notice of exemption procedures. Enclosed is a computer diskette containing the Notice in Word and pdf format. The color Exhibit is attached to the end of the Notice in Exhibit B. Also enclosed are payments of \$1,300 for the notice of exemption and an additional \$8,000 (for a total of \$9,300) if the Board determines that the proposed transaction cannot be considered under the notice of exemption procedures.

Please time and date stamp the additional copy of this letter and the Notice and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for RailAmerica, Inc., Palm Beach  
Holding, Inc., RailAmerica Transportation Corp.,  
RailTex, Inc., Fortress Investment Group, LLC, and  
RR Acquisition Holding, LLC—Control Exemption—  
Marquette Rail, LLC

**FEE RECEIVED**

FEB 03 2012

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35592

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RAILAMERICA, INC., PALM BEACH HOLDING, INC., RAILAMERCIA  
TRANSPORTATION CORP., RAILTEX, INC., FORTRESS INVESTMENT GROUP, LLC,  
AND RR ACQUISITION HOLDING, LLC  
-CONTROL EXEMPTION-MARQUETTE RAIL, LLC

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VERIFIED NOTICE OF EXEMPTION  
OR IN THE ALTERNATIVE PETITION FOR EXEMPTION AND EXPEDITED HANDLING

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VOLUME I

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Palm Beach Holding, Inc.,  
RailAmerica Transportation Corp.,  
RailTex, Inc., Fortress Investment Group,  
LLC, and RR Acquisition Holding, LLC

Dated: February 3, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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TRANSPORTATION CORP., RAILTEX, INC., FORTRESS INVESTMENT GROUP, LLC,  
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Attorneys for: RailAmerica, Inc.,  
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LLC, and RR Acquisition Holding, LLC

Dated: February 3, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35592

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RAILAMERICA, INC., PALM BEACH HOLDING, INC., RAILAMERCIA  
TRANSPORTATION CORP., RAILTEX, INC., FORTRESS INVESTMENT GROUP, LLC,  
AND RR ACQUISITION HOLDING, LLC  
–CONTROL EXEMPTION–MARQUETTE RAIL, LLC

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VERIFIED NOTICE OF EXEMPTION  
OR IN THE ALTERNATIVE PETITION FOR EXEMPTION AND EXPEDITED HANDLING

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RailAmerica, Inc. (“RailAmerica”); Palm Beach Holdings, Inc. (“Palm Beach”);  
RailAmerica Transportation Corp. (“RTC”); RailTex, Inc. (“RailTex”); Fortress Investment  
Group, LLC (“Fortress”) and RR Acquisition Holding, LLC (“RR Acquisition”) (collectively  
“RailAmerica et al.”), pursuant to 49 C.F.R. §§1180.2(d)(2) and 1180.4(g), file this Verified  
Notice of Exemption with the Surface Transportation Board (the “Board”) from the prior  
approval requirements of 49 U.S.C. §§11323-11325. This Verified Notice of Exemption is  
being filed to permit RailAmerica et al., to acquire the Membership Interest in Marquette Rail,  
LLC (“Marquette”), a Class III rail carrier (the “Proposed Transaction”).<sup>1</sup>

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<sup>1</sup> In *Marquette Rail, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34728 (STB served October 26, 2005) (“*FD 34728*”), The Board granted Marquette an exemption to lease from CSX Transportation, Inc. (“CSXT”), approximately 129.03 miles of rail line extending between: (a) milepost CGE 3.6 at the Grand Rapids, MI station and milepost CGE 73.71 at the Baldwin, MI station; (b) milepost CB 106.91 at the Baldwin station and milepost CB 136.5 at the Ludington, MI station; (c) milepost CBA 87.0 at the Walhalla, MI station and milepost CBA 113.7 at the Manistee, MI station; and (d) milepost CBA 113.7 at the Manistee station and the end of track at Filer City, MI (the Filer City Spur, approximately 2.63 miles in length) (collectively the “Line”).

In the alternative, if the Board concludes that the Proposed Transaction does not qualify as an exempt transaction under 49 C.F.R. §1180.2(d)(2), RailAmerica et al. respectfully request that the Board treat this pleading as a Petition for Exemption and expeditiously serve a decision, as justified herein.

The Line leased by Marquette from CSXT does not connect with any of the subsidiary railroads of RailAmerica et al. The southern terminus of the Line is at Turner Avenue NW in Grand Rapids, MI. See Exhibit B-2. The Mid-Michigan Railroad, Inc., Grand Rapids Division (the MMRR”), a subsidiary Class III railroad of RailAmerica et al., runs essentially east-west across the CSXT line about one-half mile south of Turner Avenue NW. In the transaction between CSXT and Marquette that resulted in the creation of Marquette (see *FD 34728*), the parties agreed that for purposes of efficiency and economy the interchange of traffic between the Marquette and CSXT would occur at CSXT’s Wyoming Yard, about seven miles south of Turner Avenue NW (the “CSXT Line”). In order for Marquette to reach Wyoming Yard, CSXT and Marquette entered an Interchange Agreement that granted Marquette access to Wyoming Yard and over the CSXT Line running between Turner Avenue NW and Wyoming Yard. The CSXT Line physically crosses MMRR over an at-grade diamond at approximately CSXT milepost CGE 3.1±. However, Marquette’s use of the CSXT Line is substantially circumscribed. Marquette is allowed to use the CSXT Line for the sole purpose of the delivery to and receipt from CSXT of traffic in interchange at Wyoming Yard. Marquette is prohibited from performing local freight service on the CSXT Line. Marquette is prohibited from entering or exiting the CSXT Line at any point other than the endpoints (Turner Avenue NW at the northern end and Wyoming Yard at the southern end), thus prohibiting interchange with MMRR.

Under 49 C.F.R. §1180.2(d)(2), the Notice of Exemption procedures apply

where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

RailAmerica et al. note that the Proposed Transaction is not part of a series of anticipated transactions to connect Marquette and MMRR and does not involve a class I carrier.

RailAmerica et al., also contends that the lines of MMRR and Marquette do not connect. First, the Line does not connect to the MMRR because the CSXT Line is owned and operated by CSXT not Marquette. Secondly, the CSXT Line is used by Marquette only for interchange pursuant to an agreement with CSXT. Third, the CSXT Line and MMR cross via a diamond. Finally, the agreement between CSXT and Marquette limits Marquette to entering or exiting the CSXT Line to Wyoming Yard where Marquette and CSXT are the only parties and at Turner Avenue NW, again where CSXT and Marquette are the only connecting railroads. In order for Marquette to expand its use of the CSXT Line, Marquette would be required to enter an agreement with CSXT and to obtain authority for that new operation from the Board.

As demonstrated above, RailAmerica et al. contend that MMRR and Marquette do not connect and respectfully request the Board to determine that the Proposed Transaction qualifies for handling under the Notice of Exemption procedures pursuant to 49 C.F.R. §§1180.2(d)(2) and 1180.4(g).

The information required for the Notice of Exemption is provided below. Following the Notice of Exemption information is a request for alternative relief as a Petition for Exemption if the Board determines that the Notice of Exemption procedures do not apply to the Proposed Transaction.

a. **1180.6(a)(1)(i)**. A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

RTC entered a Purchase and Sale Agreement dated January 30, 2012 (the “Agreement”) with Marquette Rail, LLC, Marquette Rail Corp., Farmrail System, Inc., Transportation Solutions, Inc., RC Rail Investments, LLC, Progressive Rail, Inc., JG-MQT-RR Holdings, LLC and Richard W. Jany (collectively “Sellers”). Under the Agreement, RTC will acquire the Member Interest of the Sellers in Marquette.

RailAmerica et al. is a non-rail carrier that controls a number of rail carriers and has filed this Notice of Exemption because it is seeking to acquire control of a Marquette, a rail carrier.

Fortress’s non-carrier affiliate, RR Acquisition, currently owns about 60% of the publicly traded shares and controls the non-carrier RailAmerica which directly controls the non-carrier Palm Beach, which directly controls the non-carrier RTC.

RailAmerica controls the following railroads: Alabama & Gulf Coast Railway L.L.C., Arizona & California Railroad Company, Bauxite & Northern Railway Company, California Northern Railroad Company, Cascade and Columbia River Railroad Company, Central Oregon & Pacific Railroad, Inc., The Central Railroad Company of Indiana, Central Railroad Company of Indianapolis, Connecticut Southern Railroad, Inc., Conecuh Valley Railway, LLC, Dallas, Garland & Northeastern Railroad, Inc., Delphos Terminal Railroad Company, Inc., Eastern Alabama Railway, LLC, Huron & Eastern Railway Company, Inc., Indiana & Ohio Railway Company, Indiana Southern Railroad, LLC, Kiamichi Railroad Company, L.L.C., Kyle Railroad Company, The Massena Terminal Railroad Company, Mid-Michigan Railroad, Inc. (“MMRR”), Missouri & Northern Arkansas Railroad Company, Inc., New England Central Railroad, Inc., North Carolina & Virginia Railroad Company, LLC, Otter Tail Valley Railroad Company, Inc.,

Point Comfort & Northern Railway Company, Puget Sound & Pacific Railroad, Rockdale, Sandow & Southern Railroad Company, San Diego & Imperial Valley Railroad Company, Inc., San Joaquin Valley Railroad Co., South Carolina Central Railroad Company, LLC, Three Notch Railway, LLC, Toledo, Peoria & Western Railway Corporation, Ventura County Railroad Corp., and Wiregrass Central Railway, LLC (collectively the “RailAmerica Railroads”).

Further, Fortress on behalf of other certain equity funds, managed by it and its affiliates, directly controls the non-carrier FECR Rail LLC, which directly controls FEC Rail Corp., which directly controls Florida East Coast Railway, L.L.C. (“FEC”) operating in the State of Florida. FEC is a Class II railroads. All of the RailAmerica Railroads are Class III.

The involved transaction is not part of a series of anticipated transactions that would connect the rail lines that will be operated by Marquette with any railroads in the corporate family of RailAmerica et al. as discussed above.

RailAmerica, Palm Beach, RTC, RailTex, Fortress, and RR Acquisition are all located at 7411 Fullerton Street, Jacksonville, FL, 32256, (904) 538-6329.

Marquette is located at 239 North Jebavy Drive, Ludington, MI 49431.

Counsel to whom questions concerning the transaction can be addressed is: Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (410) 296-2250, Lou@lgrailaw.com.

b. **1180.6(a)(1)(ii)**. The proposed time schedule for consummation of the proposed transaction.

RailAmerica et al. intends to acquire Marquette on or after March 4, 2012.

c. **1180.6(a)(1)(iii)**. The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The owners of Marquette have decided to sell to RailAmerica et al. The management of RailAmerica et al. has over a century of experience successfully managing short line railroads. RailAmerica et al. intends to focus on rail operations and to use its management experience and expertise in operating short line railroads and its financial resources to provide rail freight service to communities and industries who wish to have additional transportation options, and to create a financially viable railroad in Marquette.

Specifically, RailAmerica et al., intend to commence a capital program aimed at improving the condition of the Line and the locomotives used on the Line in order to improve cycle time over the Line. RailAmerica et al. intend to meet with the shippers on the Line with a goal to improve the efficiency of Marquette and provide improved service to the shippers that use Marquette.

d. **1180.6(a)(5)**. A list of the State(s) in which any part of the property of each applicant carrier is situated.

RailAmerica et al. control the following railroads operating in the states in parentheses:  
Alabama & Gulf Coast Railway L.L.C. (Alabama, Florida, and Mississippi), Arizona & California Railroad Company (Arizona and California), Bauxite & Northern Railway Company (Arkansas), California Northern Railroad Company (California), Cascade and Columbia River Railroad Company (Washington), Central Oregon & Pacific Railroad, Inc. (California and Oregon), The Central Railroad Company of Indiana (Indiana and Ohio), Central Railroad Company of Indianapolis (Illinois, Indiana, and Ohio), Connecticut Southern Railroad, Inc. (Connecticut and Massachusetts), Conecuh Valley Railway(Alabama), Dallas, Garland & Northeastern Railroad, Inc. (Texas), Delphos Terminal Company, Inc. (Ohio), Eastern Alabama Railway, LLC (Alabama), Huron & Eastern Railway Company, Inc. (Michigan), Indiana & Ohio Railway Company (Indiana, Michigan, and Ohio), Indiana Southern Railroad, LLC (Indiana),

Kiamichi Railroad Company, L.L.C. (Arkansas, Oklahoma, and Kansas), Kyle Railroad Company (Colorado and Kansas), The Massena Terminal Railroad Company (New York), Mid-Michigan Railroad, Inc. (Michigan), Missouri & Northern Arkansas Railroad Company, Inc. (Arkansas, Kansas, and Missouri), New England Central Railroad, Inc. (Connecticut, Massachusetts, New Hampshire, and Vermont), North Carolina & Virginia Railroad Company, LLC (North Carolina and Virginia), Otter Tail Valley Railroad Company, Inc. (Minnesota and South Dakota), Point Comfort & Northern Railway Company (Texas), Puget Sound & Pacific Railroad (Washington), Rockdale, Sandow & Southern Railroad Company (Texas), San Diego & Imperial Valley Railroad Company, Inc. (California), San Joaquin Valley Railroad Co.(California), South Carolina Central Railroad Company, LLC (South Carolina), Three Notch Railway, LLC (Alabama), Toledo, Peoria & Western Railway Corporation (Illinois and Indiana), Ventura County Railroad Corp. (California), and Wiregrass Central Railway, LLC (Alabama) .

Fortress on behalf of other certain equity funds, managed by it and its affiliates, controls Florida East Coast Railway, L.L.C. (Florida).

e. **1180.6(a)(6). Map (Exhibit B).** Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

*See Exhibit B at the end of the pleading with colored maps.*

f. **1180.6(a)(7)(ii). Agreement (Exhibit A).** Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

*See Exhibit A for a copy of the redacted Purchase and Sale Agreement. An unredacted version of the Purchase and Sale Agreement has been filed under seal pursuant to a protective order.*

**g. Labor Protection.**

RailAmerica et al. control Class III carriers and Fortress controls one Class II carrier. Any employees affected by the Proposed Transaction will be entitled to labor protection under 49 U.S.C. §11326(b). Therefore, RailAmerica et al. respectfully request the Board impose the labor protections under 49 U.S.C. §11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Co.*, 2 S.T.B. 218 (1997), *aff’d in relevant part sub nom. Association of American Railroads v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

**h. Environmental and Historical documentation.**

This transaction qualifies for classification under 49 C.F.R. §1105.6(c)(2) and thus neither an Environmental Report nor a Historic Report is required to be filed.

**PETITION FOR EXEMPTION AND EXPEDITED HANDLING**

If the Board determines that the Proposed Transaction does not qualify for the Notice Exemption procedures, RailAmerica et al. respectfully requests that the Board treat this filing as a Petition for Exemption for RailAmerica et al. to acquire control of Marquette and consider the information presented above in conjunction with the information presented below. RailAmerica et al. respectfully request expedited handling of this Petition for Exemption. Expedited handling is warranted to allow RailAmerica et al. to make capital improvements on the Line and to the locomotive fleet in order to improve cycle time for shippers, and to allow RailAmerica et al. to talk to shippers and potential shippers about improved service and to begin implementing improved service.

The “[a]cquisition of control of a rail carrier by any number of rail carriers” and the “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers” may be carried out only with the approval and authorization of the

Board. 49 U.S.C. §11323(a)(3) and (5). RailAmerica et al. is seeking to control Marquette, which is a Class III railroad. Fortress, RR Acquisitions, RailAmerica, Palm Beach, and RTC are not rail carriers, but control one or more rail carriers, as described above. They are seeking to obtain control of one Class III rail carrier. Therefore, their control of Marquette requires Board authorization under Section 11323(a)(5).

## **ARGUMENT**

### **THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.**

The control of the Marquette by RailAmerica et al. is subject to prior review and authorization by the Board pursuant to 49 U.S.C. §11323(a)(3 and 5). RailAmerica et al. seek an exemption under 49 U.S.C. §10502 from the applicable requirements of 49 U.S.C. §11323(a)(3 and 5) in order to acquire control of Marquette.

Pursuant to 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either: (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress

to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) (the “Boxcar Exemption”). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

Detailed scrutiny of the Proposed Transaction under 49 U.S.C. §11323(a)(3 and 5) is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101. An exemption from such review would further several of the objectives of the rail transportation policy. Moreover, the Proposed Transaction is of limited scope and will not result in an abuse of market power.

**1. The Application of 49 U.S.C. §11323(a)(3 and 5) Is Not Necessary To Carry Out The Rail Transportation Policy.**

Absent an exemption, the primary substantive issue the Board would need to address is the effect of the Proposed Transaction on competition.<sup>2</sup> Consequently, the provisions of the rail transportation policy most relevant in this exemption proceeding are 49 U.S.C. §10101(4) and (5), which encourage the preservation of effective competition.

That objective is fully satisfied by the Proposed Transaction. The Proposed Transaction will bring the strengths and resources of an established short line carrier to the management of

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<sup>2</sup> Because the Proposed Transaction does not involve the merger or control of at least two Class I rail carriers, under 49 U.S.C. §11324(d), the Board must approve the transaction “unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.”

Marquette and will enhance the local rail service currently provided on the Line through capital investment in the Line and locomotives resulting in decreased cycle time for shippers on the Line. *See* 49 U.S.C. §10101 (4) and (5). As a practical matter, the Proposed Transaction will result in a change in ownership, improved service, and enhanced operations. There will be no change in competition.

Marquette crosses over one of the RailAmerica Railroad line's to provide interchange with CSXT. As pertinent here, the MMRR and operates between milepost 137.8 at Lowell, MI and milepost 159.5 at Walker, MI and is crossed by CSXT at MMRR milepost 2.9. Marquette physically ends north of the MMRR line at Turner Avenue NW. However to facilitate interchange with CSXT, Marquette uses CSXT's track that crosses the MMRR Line at milepost 2.9.

CSXT as the receiving carrier has designated Wyoming Yard as the point of interchange for cars received from Marquette. The only way for Marquette to reach CSXT's Wyoming Yard for interchange, is by operating over the CSXT Line. The diamond over the MMRR track is used by Marquette solely for the purpose of interchanging traffic with CSXT at Wyoming Yard. Marquette has no other rights to use the crossing track.

Granting the requested exemption would also minimize Federal regulatory control over the rail transportation system and promote the deregulatory objectives of the Staggers Act and the ICCTA. This exemption proceeding will provide the Board with all the information necessary to evaluate the Proposed Transaction, but minimize regulatory delay and expedite decision making. *See Chicago West Pullman Corp.— Control Exemption— Chicago Rail Link*, ICC Finance Docket No. 31390 (ICC served February 24, 1989); *Itel Rail Corp.— Continuance in Control Exemption—FRVR Corp.*, ICC Finance Docket No. 31206 (ICC served February 5,

1988). While regulatory delay would be minimized, the interests of shippers, employees and the general public are fully protected.

Other aspects of the rail transportation policy are not adversely affected.

## **2. The Proposed Transaction Will Not Result In An Abuse of Market Power**

The Proposed Transaction will not result in an abuse of market power as set forth in 49 U.S.C. §10502(a)(2)(b). The Sellers own Marquette and through an arms-length agreement have agreed to sell it RTC. RailAmerica et al., are not aware of any shippers that object to the Proposed Transaction. The Line does not connect with any RailAmerica Railroads and crosses the MMRR using CSXT track solely for interchange purposes. A mere change in ownership will not alter the competitive atmosphere in which the carriers operate.

RailAmerica et al.'s control of Marquette will not lessen competition or transportation options for any current shipper, or any shipper that may locate on the line. Rather, shippers will potentially benefit from greater efficiencies while receiving the same service. Consequently, the Proposed Transaction will not result in any market abuses.

## **3. The Proposed Transaction Is Of Limited Scope**

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the Proposed Transaction is of limited scope. *See Pinsky Railroad Company—Control Exemption—Warren & Saline River Railroad Company*, STB Finance Docket No. 35293 (STB Served November 3, 2009).

Nevertheless, the Proposed Transaction is of limited scope. Marquette will continue to be operated as it is today simply under different ownership. The Proposed Transaction involves a change in control of a small rail carrier, in one state.

## CONCLUSION

RailAmerica, et al. have demonstrated in that the Proposed Transaction will not result in any competitive harm. The proposed transaction fosters the transportation policy, will not result in the abuse of market power, and is of limited scope. In addition expedited handling is warranted so that capital improvements, locomotives and enhanced service can begin as soon as possible. RailAmerica et al., respectfully request the Board to grant this petition for exemption in the alternative to be effective March 2, 2012.

Respectfully submitted,

Scott G. Williams Esq.  
Senior Vice President & General Counsel  
RailAmerica, Inc.  
7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
(904) 538-6329

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Attorneys for: RailAmerica, Inc.,  
Palm Beach Holding, Inc.,  
RailAmerica Transportation Corp.,  
RailTex, Inc., Fortress Investment Group,  
LLC, and RR Acquisition Holding, LLC

Dated: February 3, 2012

**VERIFICATION**

State of Florida                    )  
  ) ss  
County of Duval                    )

Scott G. Williams, being duly sworn, deposes and says that I am President of RailAmerica Transportation Corp., a Delaware corporation, and that I have read the foregoing, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief.

\_\_\_\_\_  
Scott G. Williams

Subscribed and sworn to before me this 31<sup>st</sup> day of January 2012.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket No. 35592, *RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC and RR Acquisition Holding, LLC – Control Exemption—Marquette Rail, LLC* to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and on the Governor, Public Service Commission, and Department of Transportation of the State of Michigan.

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Louis E. Gitomer  
February 3, 2012

**EXHIBIT A-AGREEMENT  
CONTAINED IN VOLUME II**

**EXHIBIT B–RAILAMERICA ET AL. MAPS**

**EXHIBIT B1 – MARQUETTE RAIL, LLC MAPS**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35592

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RAILAMERICA, INC., PALM BEACH HOLDING, INC., RAILAMERICA  
TRANSPORTATION CORP., RAILTEX, INC., FORTRESS INVESTMENT GROUP, LLC,  
AND RR ACQUISITION HOLDING, LLC  
—CONTROL EXEMPTION—MARQUETTE RAIL, LLC

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VERIFIED NOTICE OF EXEMPTION  
OR IN THE ALTERNATIVE PETITION FOR EXEMPTION AND EXPEDITED HANDLING

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RailAmerica, Inc. (“RailAmerica”); Palm Beach Holdings, Inc. (“Palm Beach”);  
RailAmerica Transportation Corp. (“RTC”); RailTex, Inc. (“RailTex”); Fortress Investment  
Group, LLC (“Fortress”) and RR Acquisition Holding, LLC (“RR Acquisition”) (collectively  
“RailAmerica et al.”), pursuant to 49 C.F.R. §§1180.2(d)(2) and 1180.4(g), file this Verified  
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approval requirements of 49 U.S.C. §§11323-11325. This Verified Notice of Exemption is  
being filed to permit RailAmerica et al., to acquire the Membership Interest in Marquette Rail,  
LLC (“Marquette”), a Class III rail carrier (the “Proposed Transaction”).<sup>1</sup>

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<sup>1</sup> In *Marquette Rail, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34728 (STB served October 26, 2005) (“*FD 34728*”), The Board granted Marquette an exemption to lease from CSX Transportation, Inc. (“CSXT”), approximately 129.03 miles of rail line extending between: (a) milepost CGE 3.6 at the Grand Rapids, MI station and milepost CGE 73.71 at the Baldwin, MI station; (b) milepost CB 106.91 at the Baldwin station and milepost CB 136.5 at the Ludington, MI station; (c) milepost CBA 87.0 at the Walhalla, MI station and milepost CBA 113.7 at the Manistee, MI station; and (d) milepost CBA 113.7 at the Manistee station and the end of track at Filer City, MI (the Filer City Spur, approximately 2.63 miles in length) (collectively the “Line”).

In the alternative, if the Board concludes that the Proposed Transaction does not qualify as an exempt transaction under 49 C.F.R. §1180.2(d)(2), RailAmerica et al. respectfully request that the Board treat this pleading as a Petition for Exemption and expeditiously serve a decision, as justified herein.

The Line leased by Marquette from CSXT does not connect with any of the subsidiary railroads of RailAmerica et al. The southern terminus of the Line is at Turner Avenue NW in Grand Rapids, MI. See Exhibit B-2. The Mid-Michigan Railroad, Inc., Grand Rapids Division (the MMRR”), a subsidiary Class III railroad of RailAmerica et al., runs essentially east-west across the CSXT line about one-half mile south of Turner Avenue NW. In the transaction between CSXT and Marquette that resulted in the creation of Marquette (see *FD 34728*), the parties agreed that for purposes of efficiency and economy the interchange of traffic between the Marquette and CSXT would occur at CSXT’s Wyoming Yard, about seven miles south of Turner Avenue NW (the “CSXT Line”). In order for Marquette to reach Wyoming Yard, CSXT and Marquette entered an Interchange Agreement that granted Marquette access to Wyoming Yard and over the CSXT Line running between Turner Avenue NW and Wyoming Yard. The CSXT Line physically crosses MMRR over an at-grade diamond at approximately CSXT milepost CGE 3.1±. However, Marquette’s use of the CSXT Line is substantially circumscribed. Marquette is allowed to use the CSXT Line for the sole purpose of the delivery to and receipt from CSXT of traffic in interchange at Wyoming Yard. Marquette is prohibited from performing local freight service on the CSXT Line. Marquette is prohibited from entering or exiting the CSXT Line at any point other than the endpoints (Turner Avenue NW at the northern end and Wyoming Yard at the southern end), thus prohibiting interchange with MMRR.

Under 49 C.F.R. §1180.2(d)(2), the Notice of Exemption procedures apply

where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

RailAmerica et al. note that the Proposed Transaction is not part of a series of anticipated transactions to connect Marquette and MMRR and does not involve a class I carrier.

RailAmerica et al., also contends that the lines of MMRR and Marquette do not connect. First, the Line does not connect to the MMRR because the CSXT Line is owned and operated by CSXT not Marquette. Secondly, the CSXT Line is used by Marquette only for interchange pursuant to an agreement with CSXT. Third, the CSXT Line and MMR cross via a diamond. Finally, the agreement between CSXT and Marquette limits Marquette to entering or exiting the CSXT Line to Wyoming Yard where Marquette and CSXT are the only parties and at Turner Avenue NW, again where CSXT and Marquette are the only connecting railroads. In order for Marquette to expand its use of the CSXT Line, Marquette would be required to enter an agreement with CSXT and to obtain authority for that new operation from the Board.

As demonstrated above, RailAmerica et al. contend that MMRR and Marquette do not connect and respectfully request the Board to determine that the Proposed Transaction qualifies for handling under the Notice of Exemption procedures pursuant to 49 C.F.R. §§1180.2(d)(2) and 1180.4(g).

The information required for the Notice of Exemption is provided below. Following the Notice of Exemption information is a request for alternative relief as a Petition for Exemption if the Board determines that the Notice of Exemption procedures do not apply to the Proposed Transaction.

a. **1180.6(a)(1)(i)**. A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

RTC entered a Purchase and Sale Agreement dated January 30, 2012 (the “Agreement”) with Marquette Rail, LLC, Marquette Rail Corp., Farmrail System, Inc., Transportation Solutions, Inc., RC Rail Investments, LLC, Progressive Rail, Inc., JG-MQT-RR Holdings, LLC and Richard W. Jany (collectively “Sellers”). Under the Agreement, RTC will acquire the Member Interest of the Sellers in Marquette.

RailAmerica et al. is a non-rail carrier that controls a number of rail carriers and has filed this Notice of Exemption because it is seeking to acquire control of a Marquette, a rail carrier.

Fortress’s non-carrier affiliate, RR Acquisition, currently owns about 60% of the publicly traded shares and controls the non-carrier RailAmerica which directly controls the non-carrier Palm Beach, which directly controls the non-carrier RTC.

RailAmerica controls the following railroads: Alabama & Gulf Coast Railway L.L.C., Arizona & California Railroad Company, Bauxite & Northern Railway Company, California Northern Railroad Company, Cascade and Columbia River Railroad Company, Central Oregon & Pacific Railroad, Inc., The Central Railroad Company of Indiana, Central Railroad Company of Indianapolis, Connecticut Southern Railroad, Inc., Conecuh Valley Railway, LLC, Dallas, Garland & Northeastern Railroad, Inc., Delphos Terminal Railroad Company, Inc., Eastern Alabama Railway, LLC, Huron & Eastern Railway Company, Inc., Indiana & Ohio Railway Company, Indiana Southern Railroad, LLC, Kiamichi Railroad Company, L.L.C., Kyle Railroad Company, The Massena Terminal Railroad Company, Mid-Michigan Railroad, Inc. (“MMRR”), Missouri & Northern Arkansas Railroad Company, Inc., New England Central Railroad, Inc., North Carolina & Virginia Railroad Company, LLC, Otter Tail Valley Railroad Company, Inc.,

Point Comfort & Northern Railway Company, Puget Sound & Pacific Railroad, Rockdale, Sandow & Southern Railroad Company, San Diego & Imperial Valley Railroad Company, Inc., San Joaquin Valley Railroad Co., South Carolina Central Railroad Company, LLC, Three Notch Railway, LLC, Toledo, Peoria & Western Railway Corporation, Ventura County Railroad Corp., and Wiregrass Central Railway, LLC (collectively the “RailAmerica Railroads”).

Further, Fortress on behalf of other certain equity funds, managed by it and its affiliates, directly controls the non-carrier FECR Rail LLC, which directly controls FEC Rail Corp., which directly controls Florida East Coast Railway, L.L.C. (“FEC”) operating in the State of Florida. FEC is a Class II railroads. All of the RailAmerica Railroads are Class III.

The involved transaction is not part of a series of anticipated transactions that would connect the rail lines that will be operated by Marquette with any railroads in the corporate family of RailAmerica et al. as discussed above.

RailAmerica, Palm Beach, RTC, RailTex, Fortress, and RR Acquisition are all located at 7411 Fullerton Street, Jacksonville, FL, 32256, (904) 538-6329.

Marquette is located at 239 North Jebavy Drive, Ludington, MI 49431.

Counsel to whom questions concerning the transaction can be addressed is: Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, (410) 296-2250, Lou@lgraillaw.com.

b. **1180.6(a)(1)(ii).** The proposed time schedule for consummation of the proposed transaction.

RailAmerica et al. intends to acquire Marquette on or after March 4, 2012.

c. **1180.6(a)(1)(iii).** The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The owners of Marquette have decided to sell to RailAmerica et al. The management of RailAmerica et al. has over a century of experience successfully managing short line railroads. RailAmerica et al. intends to focus on rail operations and to use its management experience and expertise in operating short line railroads and its financial resources to provide rail freight service to communities and industries who wish to have additional transportation options, and to create a financially viable railroad in Marquette.

Specifically, RailAmerica et al., intend to commence a capital program aimed at improving the condition of the Line and the locomotives used on the Line in order to improve cycle time over the Line. RailAmerica et al. intend to meet with the shippers on the Line with a goal to improve the efficiency of Marquette and provide improved service to the shippers that use Marquette.

d. **1180.6(a)(5)**. A list of the State(s) in which any part of the property of each applicant carrier is situated.

RailAmerica et al. control the following railroads operating in the states in parentheses:  
Alabama & Gulf Coast Railway L.L.C. (Alabama, Florida, and Mississippi), Arizona & California Railroad Company (Arizona and California), Bauxite & Northern Railway Company (Arkansas), California Northern Railroad Company (California), Cascade and Columbia River Railroad Company (Washington), Central Oregon & Pacific Railroad, Inc. (California and Oregon), The Central Railroad Company of Indiana (Indiana and Ohio), Central Railroad Company of Indianapolis (Illinois, Indiana, and Ohio), Connecticut Southern Railroad, Inc. (Connecticut and Massachusetts), Conecuh Valley Railway(Alabama), Dallas, Garland & Northeastern Railroad, Inc. (Texas), Delphos Terminal Company, Inc. (Ohio), Eastern Alabama Railway, LLC (Alabama), Huron & Eastern Railway Company, Inc. (Michigan), Indiana & Ohio Railway Company (Indiana, Michigan, and Ohio), Indiana Southern Railroad, LLC (Indiana),

Kiamichi Railroad Company, L.L.C. (Arkansas, Oklahoma, and Kansas), Kyle Railroad Company (Colorado and Kansas), The Massena Terminal Railroad Company (New York), Mid-Michigan Railroad, Inc. (Michigan), Missouri & Northern Arkansas Railroad Company, Inc. (Arkansas, Kansas, and Missouri), New England Central Railroad, Inc. (Connecticut, Massachusetts, New Hampshire, and Vermont), North Carolina & Virginia Railroad Company, LLC (North Carolina and Virginia), Otter Tail Valley Railroad Company, Inc. (Minnesota and South Dakota), Point Comfort & Northern Railway Company (Texas), Puget Sound & Pacific Railroad (Washington), Rockdale, Sandow & Southern Railroad Company (Texas), San Diego & Imperial Valley Railroad Company, Inc. (California), San Joaquin Valley Railroad Co.(California), South Carolina Central Railroad Company, LLC (South Carolina), Three Notch Railway, LLC (Alabama), Toledo, Peoria & Western Railway Corporation (Illinois and Indiana), Ventura County Railroad Corp. (California), and Wiregrass Central Railway, LLC (Alabama) .

Fortress on behalf of other certain equity funds, managed by it and its affiliates, controls Florida East Coast Railway, L.L.C. (Florida).

e. **1180.6(a)(6). Map (Exhibit B).** Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

*See* Exhibit B at the end of the pleading with colored maps.

f. **1180.6(a)(7)(ii). Agreement (Exhibit A).** Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

*See* Exhibit A for a copy of the redacted Purchase and Sale Agreement. An unredacted version of the Purchase and Sale Agreement has been filed under seal pursuant to a protective order.

**g. Labor Protection.**

RailAmerica et al. control Class III carriers and Fortress controls one Class II carrier. Any employees affected by the Proposed Transaction will be entitled to labor protection under 49 U.S.C. §11326(b). Therefore, RailAmerica et al. respectfully request the Board impose the labor protections under 49 U.S.C. §11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Co.*, 2 S.T.B. 218 (1997), *aff'd in relevant part sub nom. Association of American Railroads v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

**h. Environmental and Historical documentation.**

This transaction qualifies for classification under 49 C.F.R. §1105.6(c)(2) and thus neither an Environmental Report nor a Historic Report is required to be filed.

**PETITION FOR EXEMPTION AND EXPEDITED HANDLING**

If the Board determines that the Proposed Transaction does not qualify for the Notice Exemption procedures, RailAmerica et al. respectfully requests that the Board treat this filing as a Petition for Exemption for RailAmerica et al. to acquire control of Marquette and consider the information presented above in conjunction with the information presented below. RailAmerica et al. respectfully request expedited handling of this Petition for Exemption. Expedited handling is warranted to allow RailAmerica et al. to make capital improvements on the Line and to the locomotive fleet in order to improve cycle time for shippers, and to allow RailAmerica et al. to talk to shippers and potential shippers about improved service and to begin implementing improved service.

The “[a]cquisition of control of a rail carrier by any number of rail carriers” and the “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers” may be carried out only with the approval and authorization of the

Board. 49 U.S.C. §11323(a)(3) and (5). RailAmerica et al. is seeking to control Marquette, which is a Class III railroad. Fortress, RR Acquisitions, RailAmerica, Palm Beach, and RTC are not rail carriers, but control one or more rail carriers, as described above. They are seeking to obtain control of one Class III rail carrier. Therefore, their control of Marquette requires Board authorization under Section 11323(a)(5).

## **ARGUMENT**

### **THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.**

The control of the Marquette by RailAmerica et al. is subject to prior review and authorization by the Board pursuant to 49 U.S.C. §11323(a)(3 and 5). RailAmerica et al. seek an exemption under 49 U.S.C. §10502 from the applicable requirements of 49 U.S.C. §11323(a)(3 and 5) in order to acquire control of Marquette.

Pursuant to 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either: (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress

to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) (the “*Boxcar Exemption*”). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

Detailed scrutiny of the Proposed Transaction under 49 U.S.C. §11323(a)(3 and 5) is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101. An exemption from such review would further several of the objectives of the rail transportation policy. Moreover, the Proposed Transaction is of limited scope and will not result in an abuse of market power.

**1. The Application of 49 U.S.C. §11323(a)(3 and 5) Is Not Necessary To Carry Out The Rail Transportation Policy.**

Absent an exemption, the primary substantive issue the Board would need to address is the effect of the Proposed Transaction on competition.<sup>2</sup> Consequently, the provisions of the rail transportation policy most relevant in this exemption proceeding are 49 U.S.C. §10101(4) and (5), which encourage the preservation of effective competition.

That objective is fully satisfied by the Proposed Transaction. The Proposed Transaction will bring the strengths and resources of an established short line carrier to the management of

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<sup>2</sup> Because the Proposed Transaction does not involve the merger or control of at least two Class I rail carriers, under 49 U.S.C. §11324(d), the Board must approve the transaction “unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.”

Marquette and will enhance the local rail service currently provided on the Line through capital investment in the Line and locomotives resulting in decreased cycle time for shippers on the Line. *See* 49 U.S.C. §10101 (4) and (5). As a practical matter, the Proposed Transaction will result in a change in ownership, improved service, and enhanced operations. There will be no change in competition.

Marquette crosses over one of the RailAmerica Railroad line's to provide interchange with CSXT. As pertinent here, the MMRR and operates between milepost 137.8 at Lowell, MI and milepost 159.5 at Walker, MI and is crossed by CSXT at MMRR milepost 2.9. Marquette physically ends north of the MMRR line at Turner Avenue NW. However to facilitate interchange with CSXT, Marquette uses CSXT's track that crosses the MMRR Line at milepost 2.9.

CSXT as the receiving carrier has designated Wyoming Yard as the point of interchange for cars received from Marquette. The only way for Marquette to reach CSXT's Wyoming Yard for interchange, is by operating over the CSXT Line. The diamond over the MMRR track is used by Marquette solely for the purpose of interchanging traffic with CSXT at Wyoming Yard. Marquette has no other rights to use the crossing track.

Granting the requested exemption would also minimize Federal regulatory control over the rail transportation system and promote the deregulatory objectives of the Staggers Act and the ICCTA. This exemption proceeding will provide the Board with all the information necessary to evaluate the Proposed Transaction, but minimize regulatory delay and expedite decision making. *See Chicago West Pullman Corp.—Control Exemption—Chicago Rail Link*, ICC Finance Docket No. 31390 (ICC served February 24, 1989); *Itel Rail Corp.—Continuance in Control Exemption—FRVR Corp.*, ICC Finance Docket No. 31206 (ICC served February 5,

1988). While regulatory delay would be minimized, the interests of shippers, employees and the general public are fully protected.

Other aspects of the rail transportation policy are not adversely affected.

## **2. The Proposed Transaction Will Not Result In An Abuse of Market Power**

The Proposed Transaction will not result in an abuse of market power as set forth in 49 U.S.C. §10502(a)(2)(b). The Sellers own Marquette and through an arms-length agreement have agreed to sell it RTC. RailAmerica et al., are not aware of any shippers that object to the Proposed Transaction. The Line does not connect with any RailAmerica Railroads and crosses the MMRR using CSXT track solely for interchange purposes. A mere change in ownership will not alter the competitive atmosphere in which the carriers operate.

RailAmerica et al.'s control of Marquette will not lessen competition or transportation options for any current shipper, or any shipper that may locate on the line. Rather, shippers will potentially benefit from greater efficiencies while receiving the same service. Consequently, the Proposed Transaction will not result in any market abuses.

## **3. The Proposed Transaction Is Of Limited Scope**

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the Proposed Transaction is of limited scope. *See Pinsky Railroad Company—Control Exemption—Warren & Saline River Railroad Company*, STB Finance Docket No. 35293 (STB Served November 3, 2009).

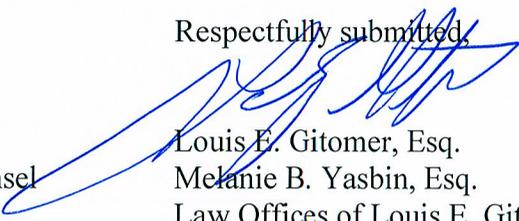
Nevertheless, the Proposed Transaction is of limited scope. Marquette will continue to be operated as it is today simply under different ownership. The Proposed Transaction involves a change in control of a small rail carrier, in one state.

## CONCLUSION

RailAmerica, et al. have demonstrated in that the Proposed Transaction will not result in any competitive harm. The proposed transaction fosters the transportation policy, will not result in the abuse of market power, and is of limited scope. In addition expedited handling is warranted so that capital improvements, locomotives and enhanced service can begin as soon as possible. RailAmerica et al., respectfully request the Board to grant this petition for exemption in the alternative to be effective March 2, 2012.

Respectfully submitted,

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7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
(904) 538-6329



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Attorneys for: RailAmerica, Inc.,  
Palm Beach Holding, Inc.,  
RailAmerica Transportation Corp.,  
RailTex, Inc., Fortress Investment Group,  
LLC, and RR Acquisition Holding, LLC

Dated: February 3, 2012

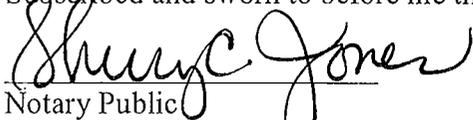
**VERIFICATION**

State of Florida                    )  
  ) ss  
County of Duval            )

Scott G. Williams, being duly sworn, deposes and says that I am President of RailAmerica Transportation Corp., a Delaware corporation, and that I have read the foregoing, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Scott G. Williams

Subscribed and sworn to before me this 31<sup>st</sup> day of January 2012.

  
\_\_\_\_\_  
Notary Public

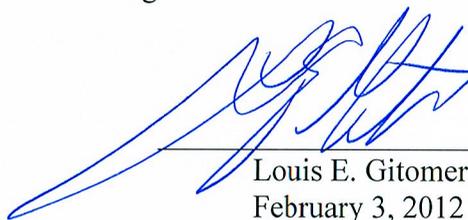
My Commission expires:



SHERRY C. JONES  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# DD0947305  
Expires 1/22/2014

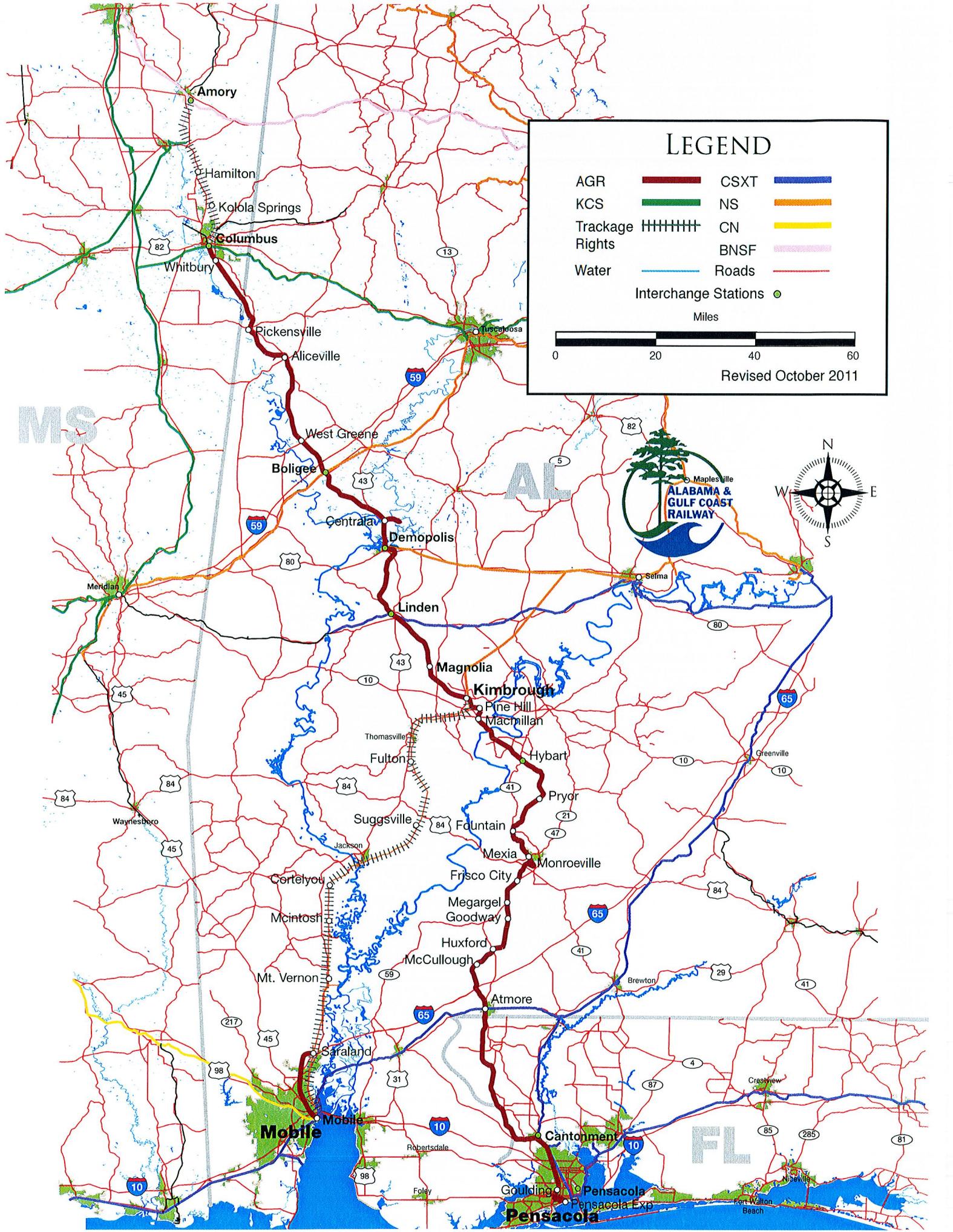
**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket No. 35592, *RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC and RR Acquisition Holding, LLC – Control Exemption—Marquette Rail, LLC* to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and on the Governor, Public Service Commission, and Department of Transportation of the State of Michigan.

  
\_\_\_\_\_  
Louis E. Gitomer  
February 3, 2012

**EXHIBIT A-AGREEMENT  
CONTAINED IN VOLUME II**

**EXHIBIT B—RAILAMERICA ET AL. MAPS**



### LEGEND

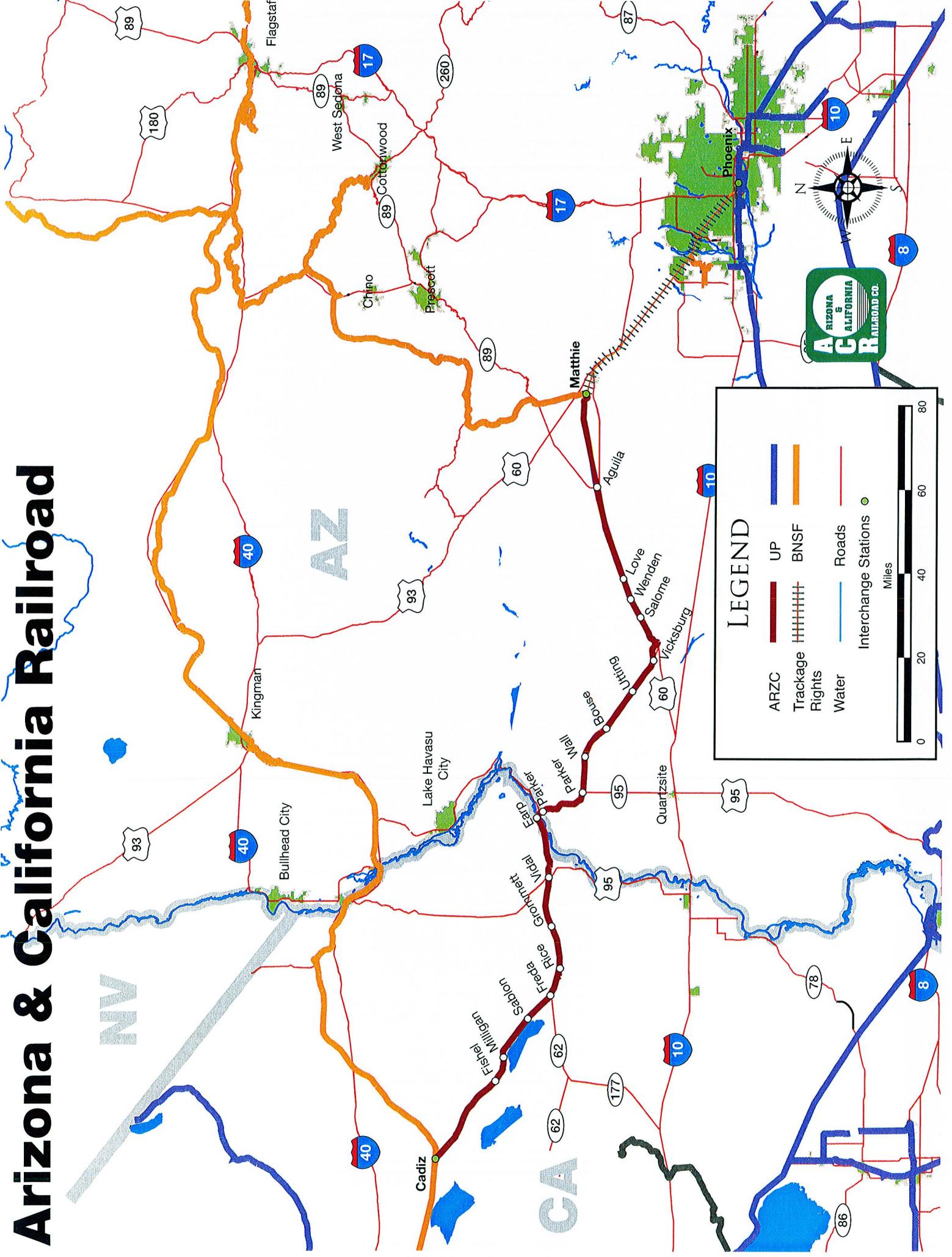
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Revised October 2011



# Arizona & California Railroad



**LEGEND**

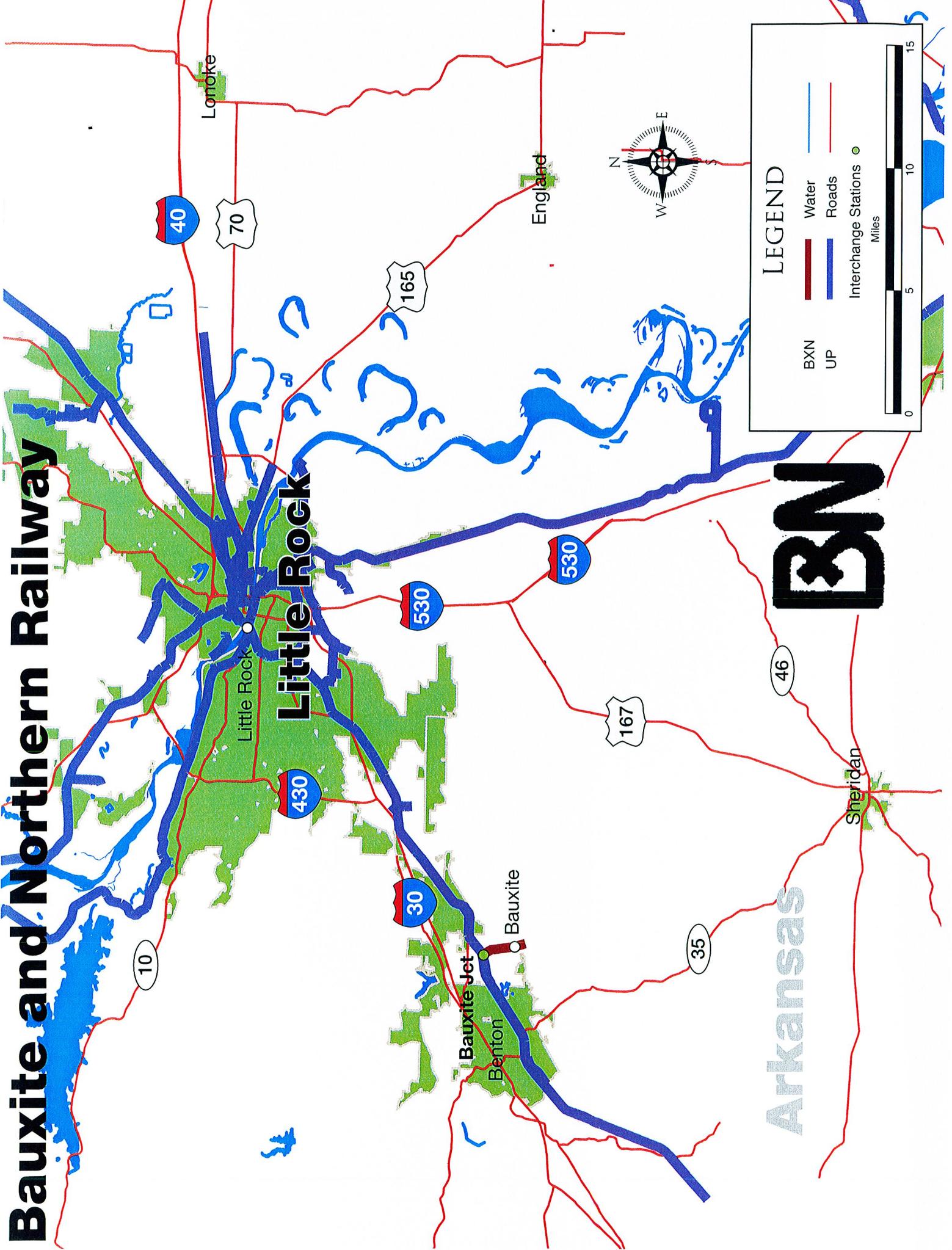
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# Bauxite and Northern Railway



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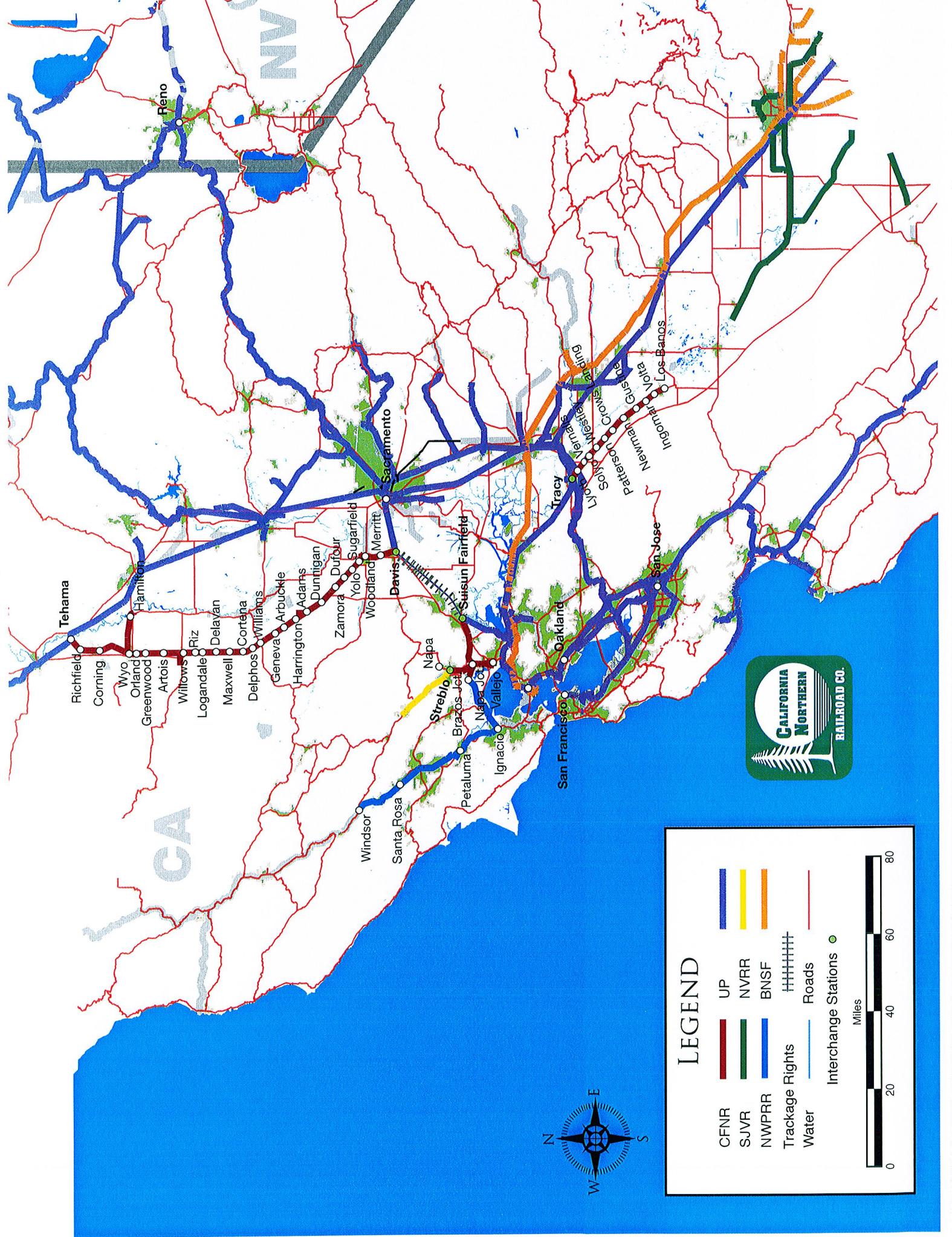
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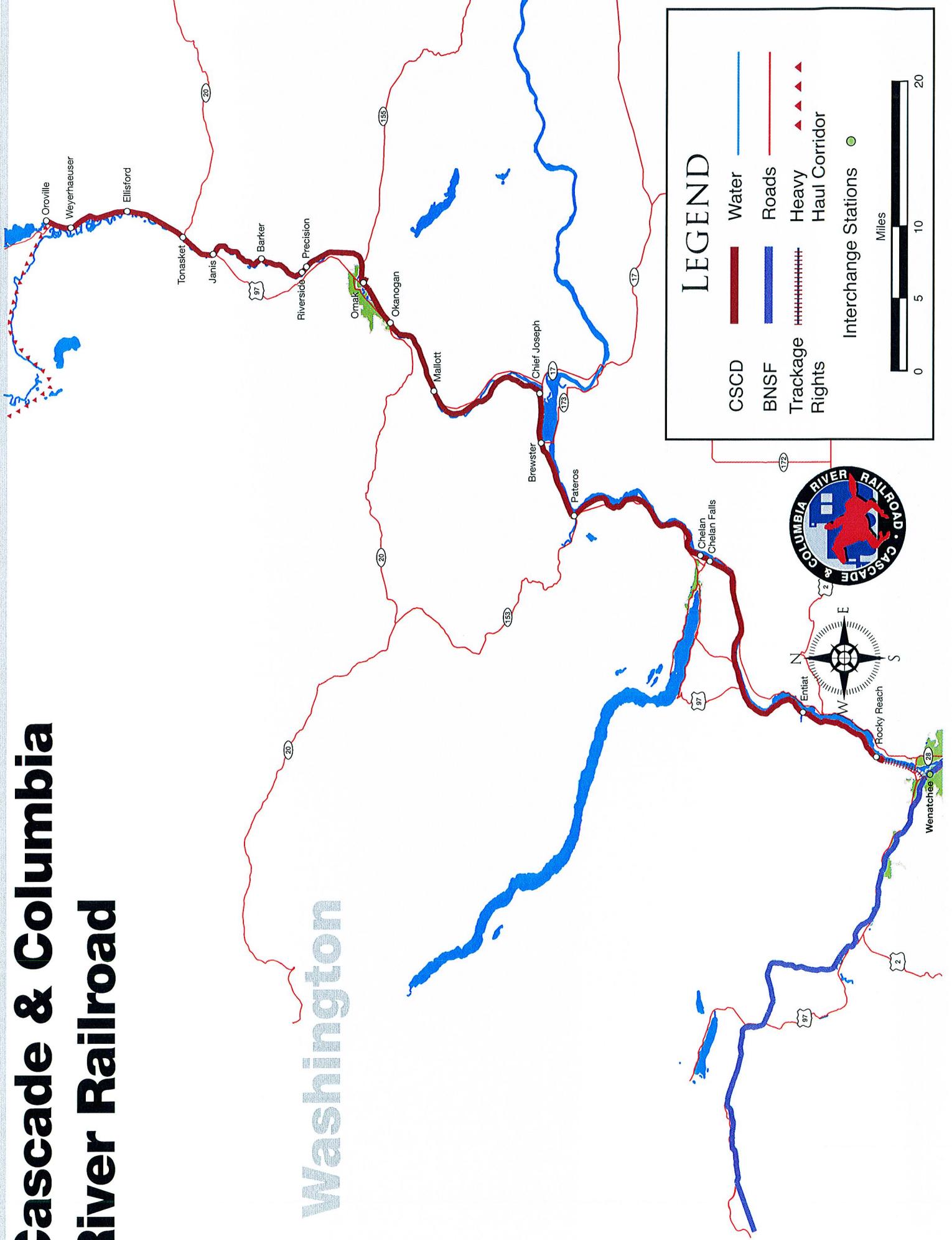


### LEGEND

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# Cascade & Columbia River Railroad

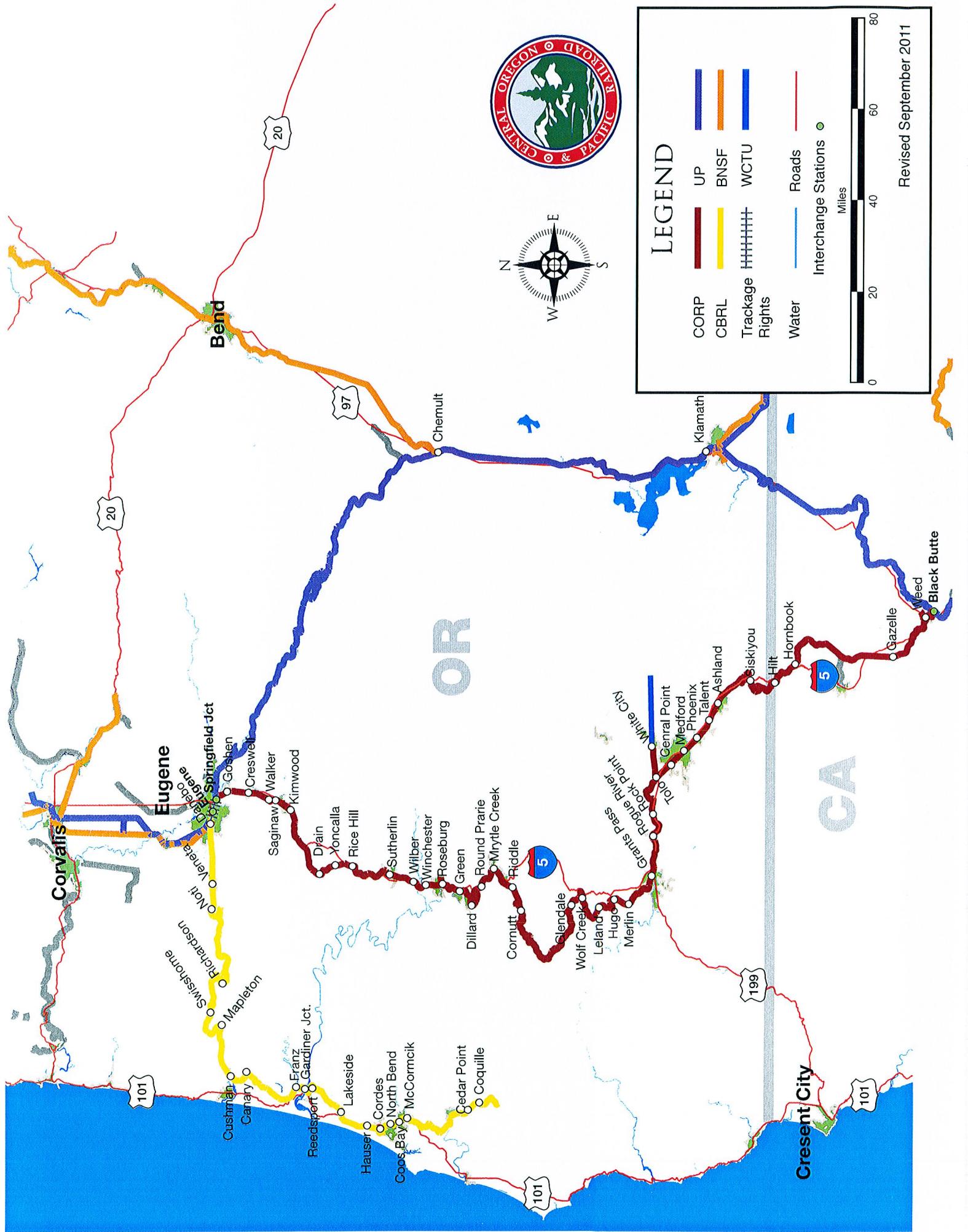
Washington



## LEGEND

- CSCD — Water —
- BNSF — Roads —
- Trackage - - - - - Heavy ▲▲
- Rights Haul Corridor ●
- Interchange Stations ●





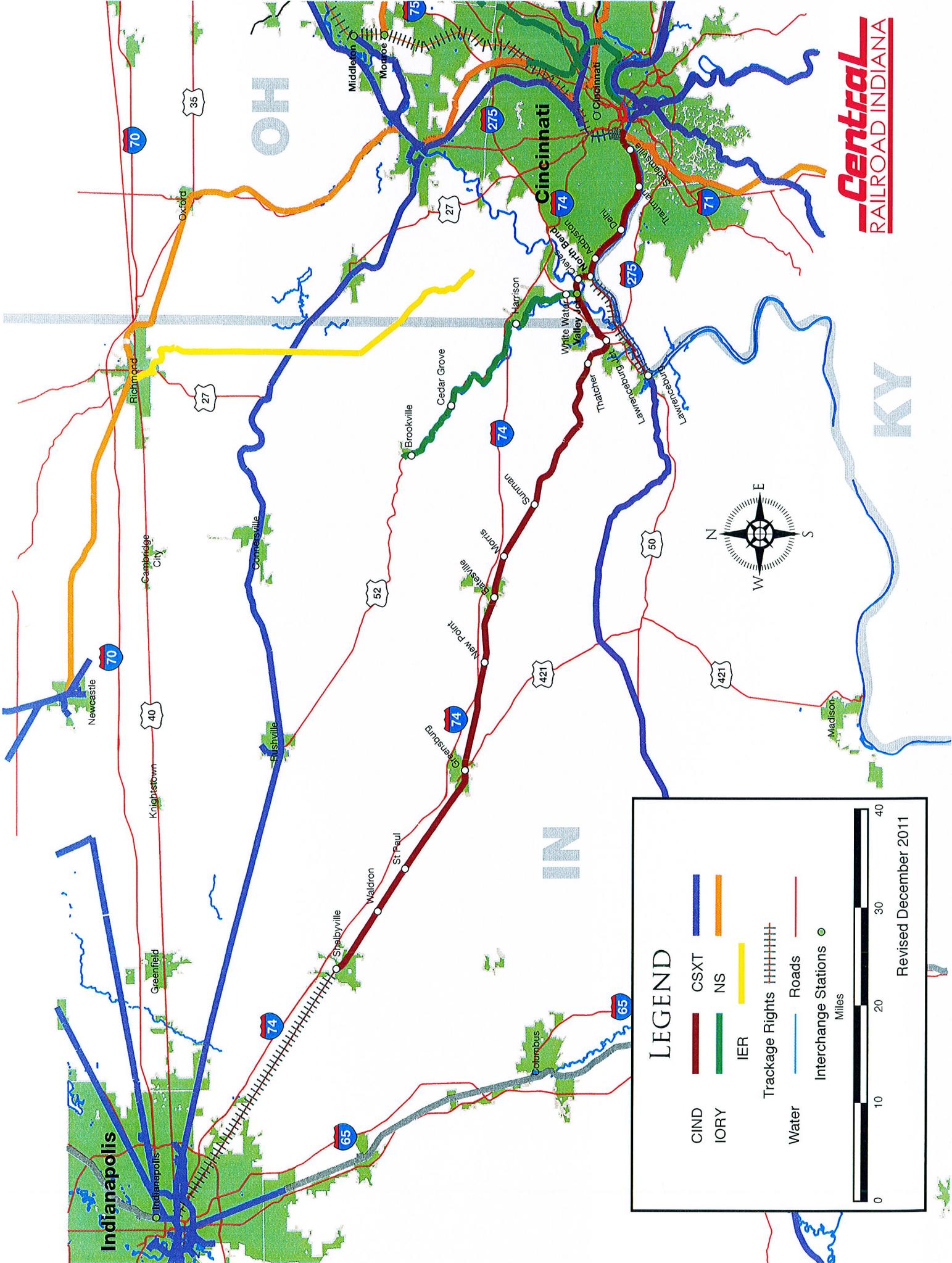
### LEGEND

|                      |                 |       |       |
|----------------------|-----------------|-------|-------|
| CORP                 | UP              | BNSF  | WCTU  |
| CBRL                 | Trackage Rights | Roads | Water |
| Interchange Stations |                 |       |       |

Miles

0 20 40 60 80

Revised September 2011



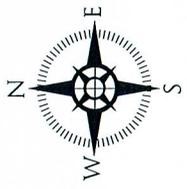
**LEGEND**

- CIND — CSXT —
- IORY — NS —
- IER —
- Trackage Rights - - - - -
- Water — Roads —
- Interchange Stations ●

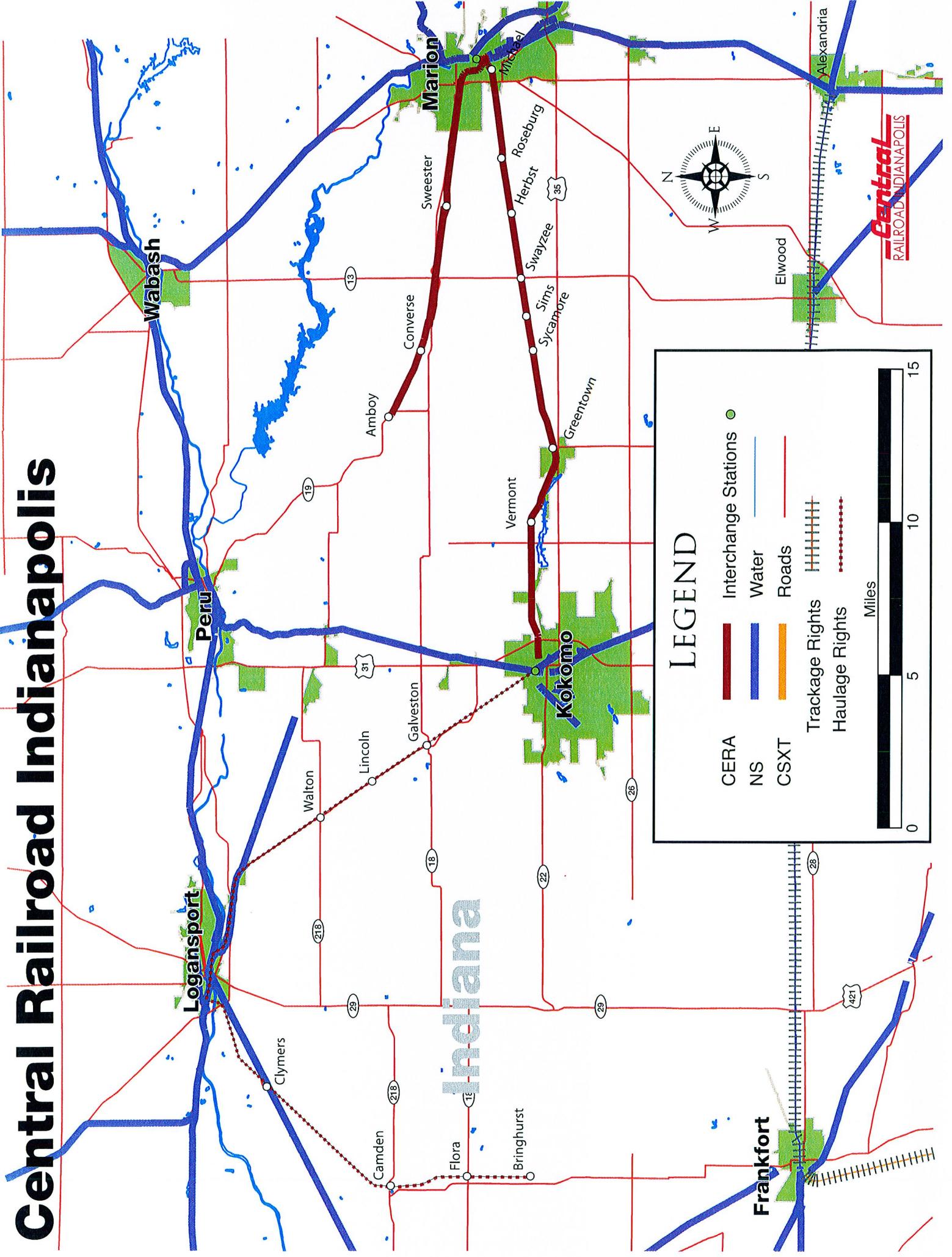
Miles

0 10 20 30 40

Revised December 2011

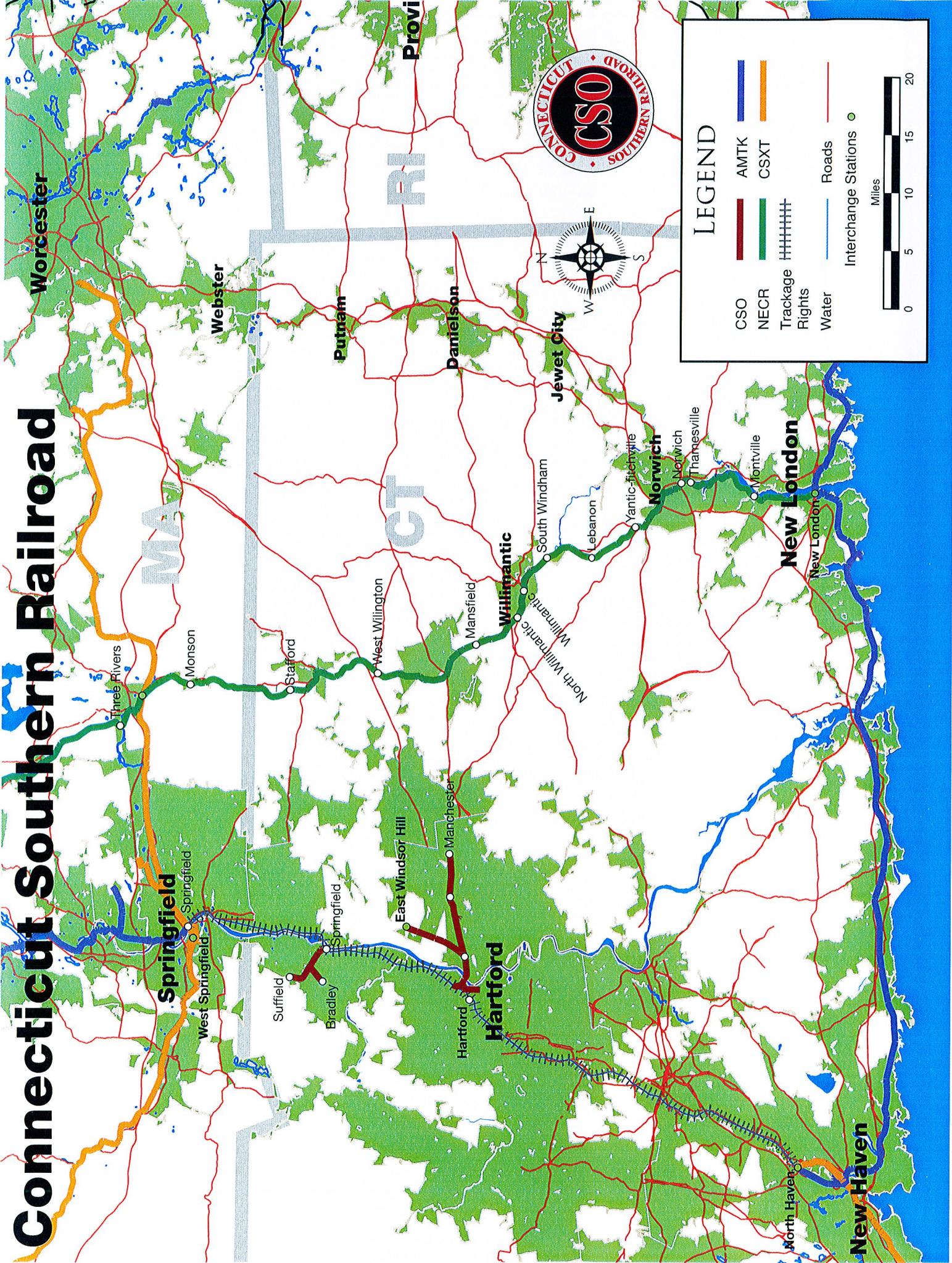


# Central Railroad Indianapolis





# Connecticut Southern Railroad



## LEGEND

- CSO
- AMTK
- NECR
- Trackage Rights
- Water
- Roads
- Interchange Stations



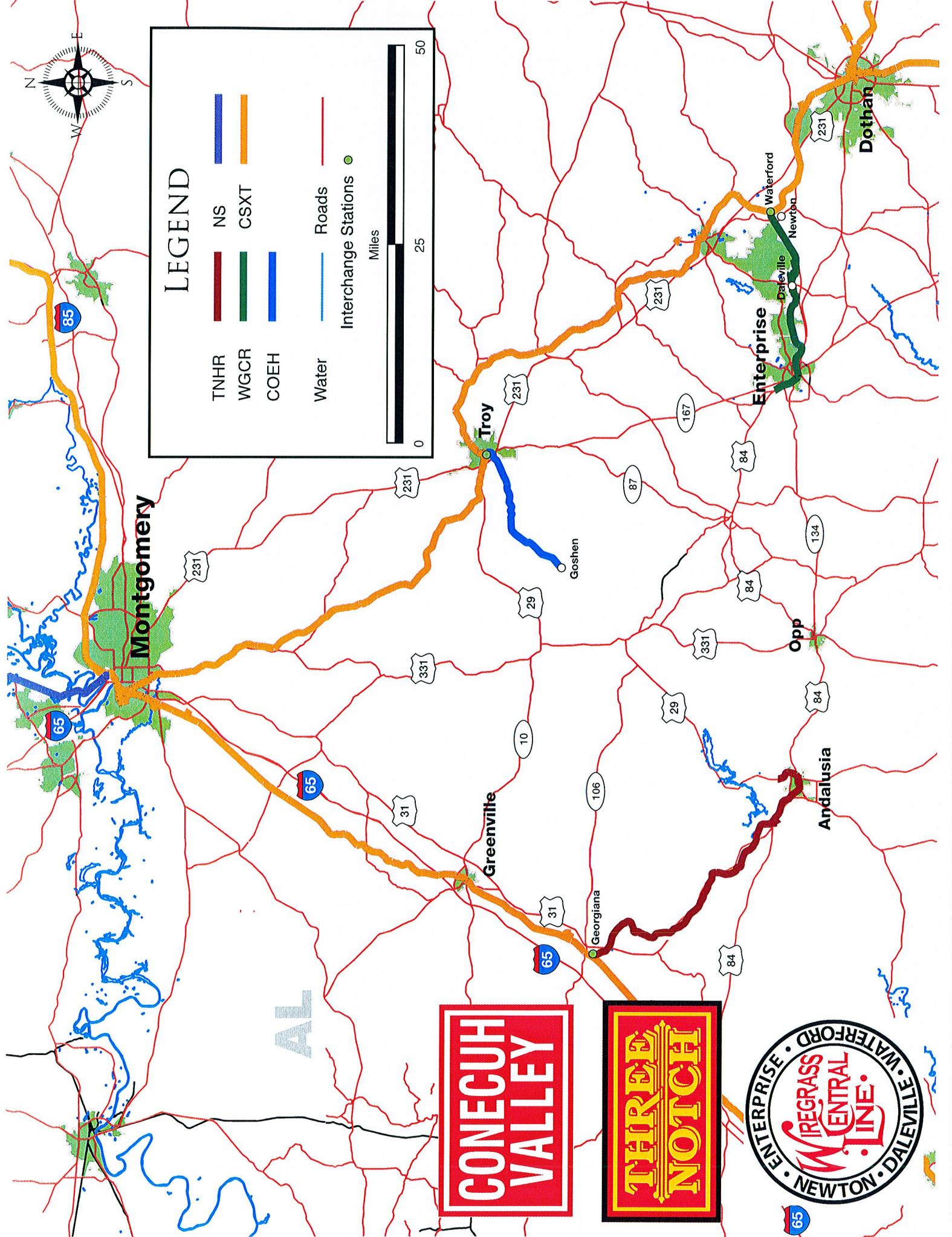


**LEGEND**

|      |      |      |       |       |                      |
|------|------|------|-------|-------|----------------------|
| TNHR | NS   | CSXT | Water | Roads | Interchange Stations |
| WGCR | COEH |      |       |       |                      |

Miles

0 25 50



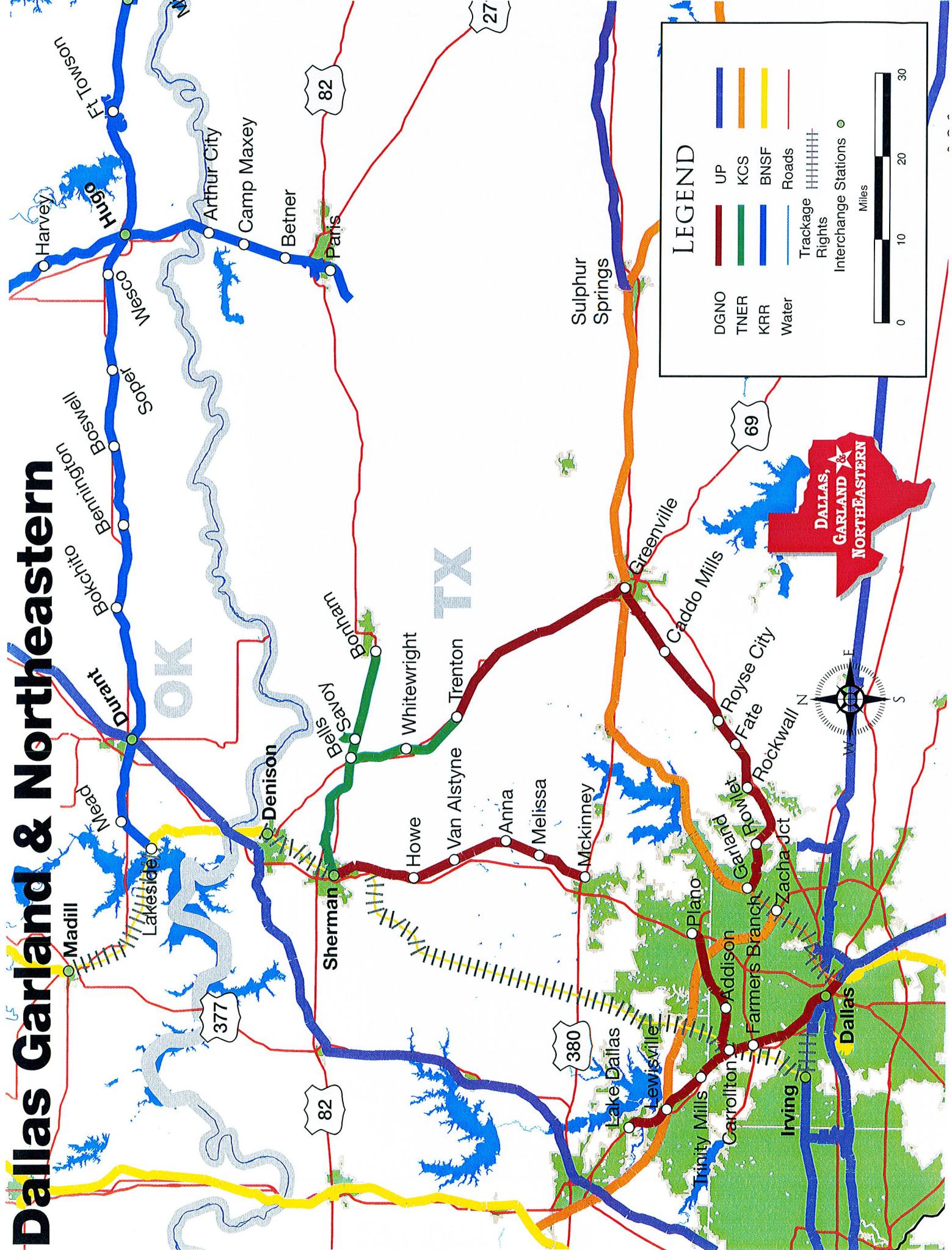
AL

**CONEGUH  
VALLEY**

**THIRD  
NOTCH**

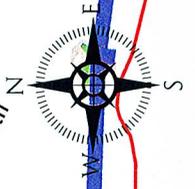


# Dallas Garland & Northeastern



## LEGEND

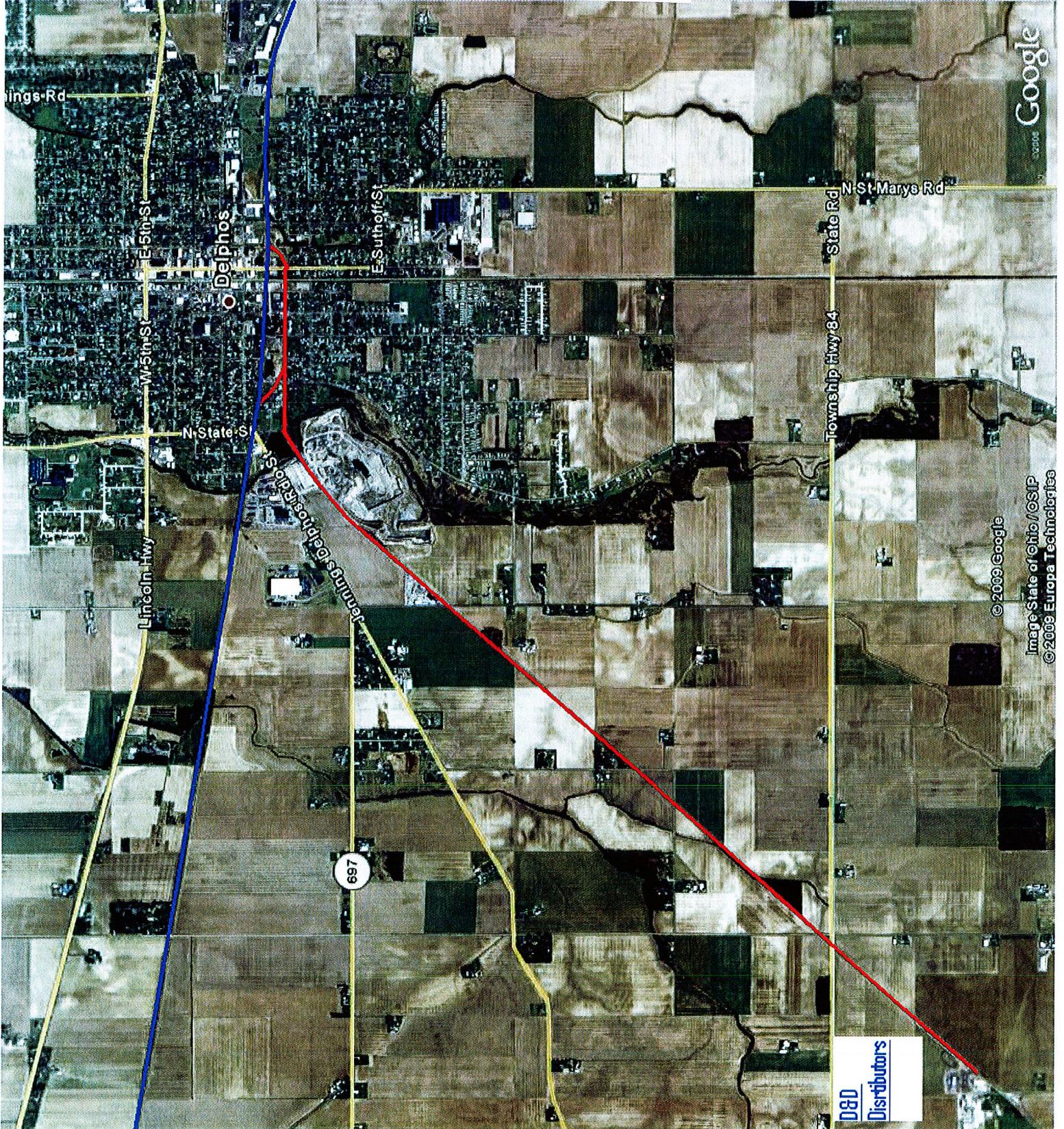
- DGNO
- TNER
- KRR
- Water
- UP
- KCS
- BNSF
- Roads
- Trackage Rights
- Interchange Stations



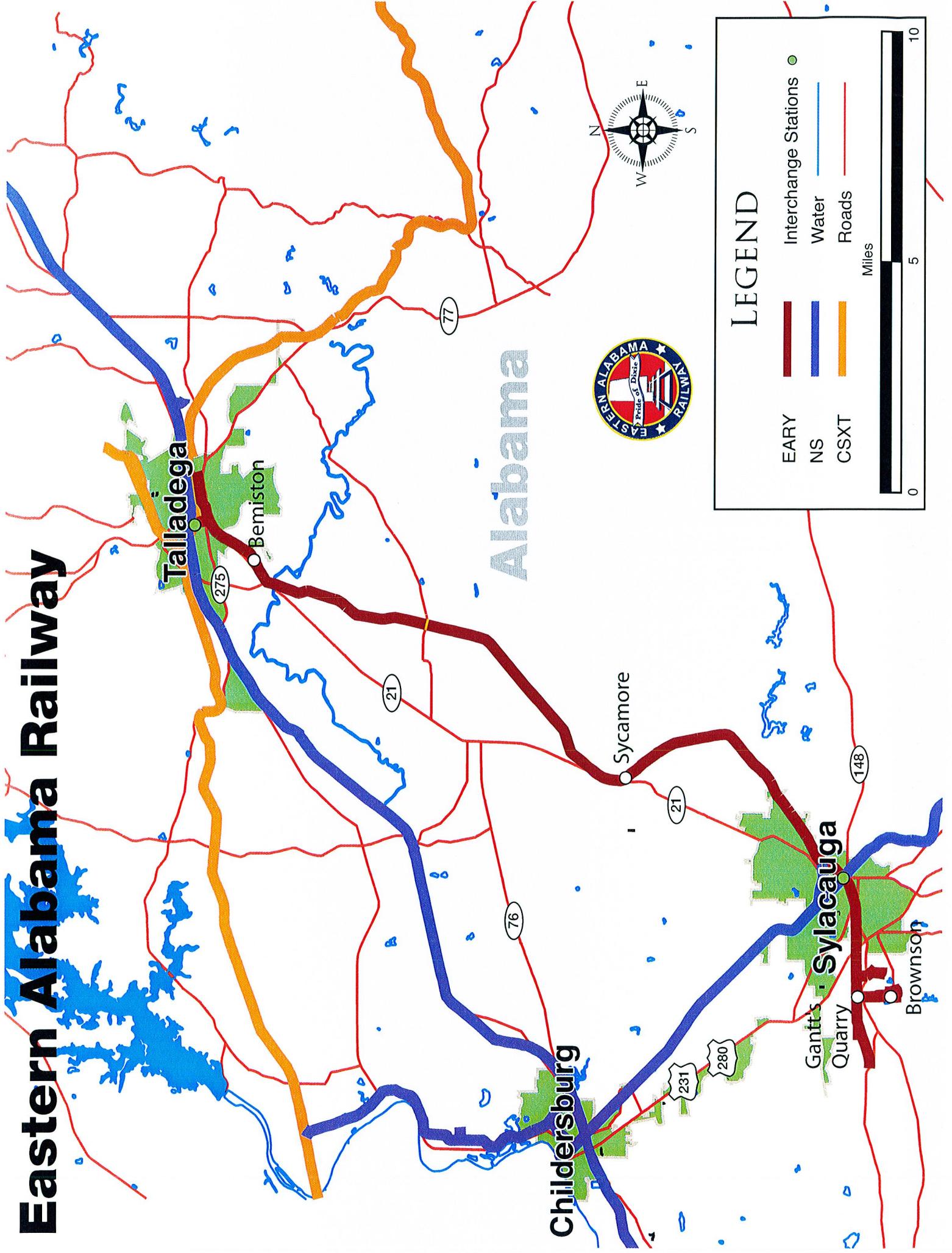
TX

OK

DELPHOS TERMINAL RAILROAD  
COMPANY, INC.



# Eastern Alabama Railway



Alabama

Talladega

Bemiston

Childersburg

Sycamore

Sylacauga

Ganitts Quarry

Brownson



77

21

76

21

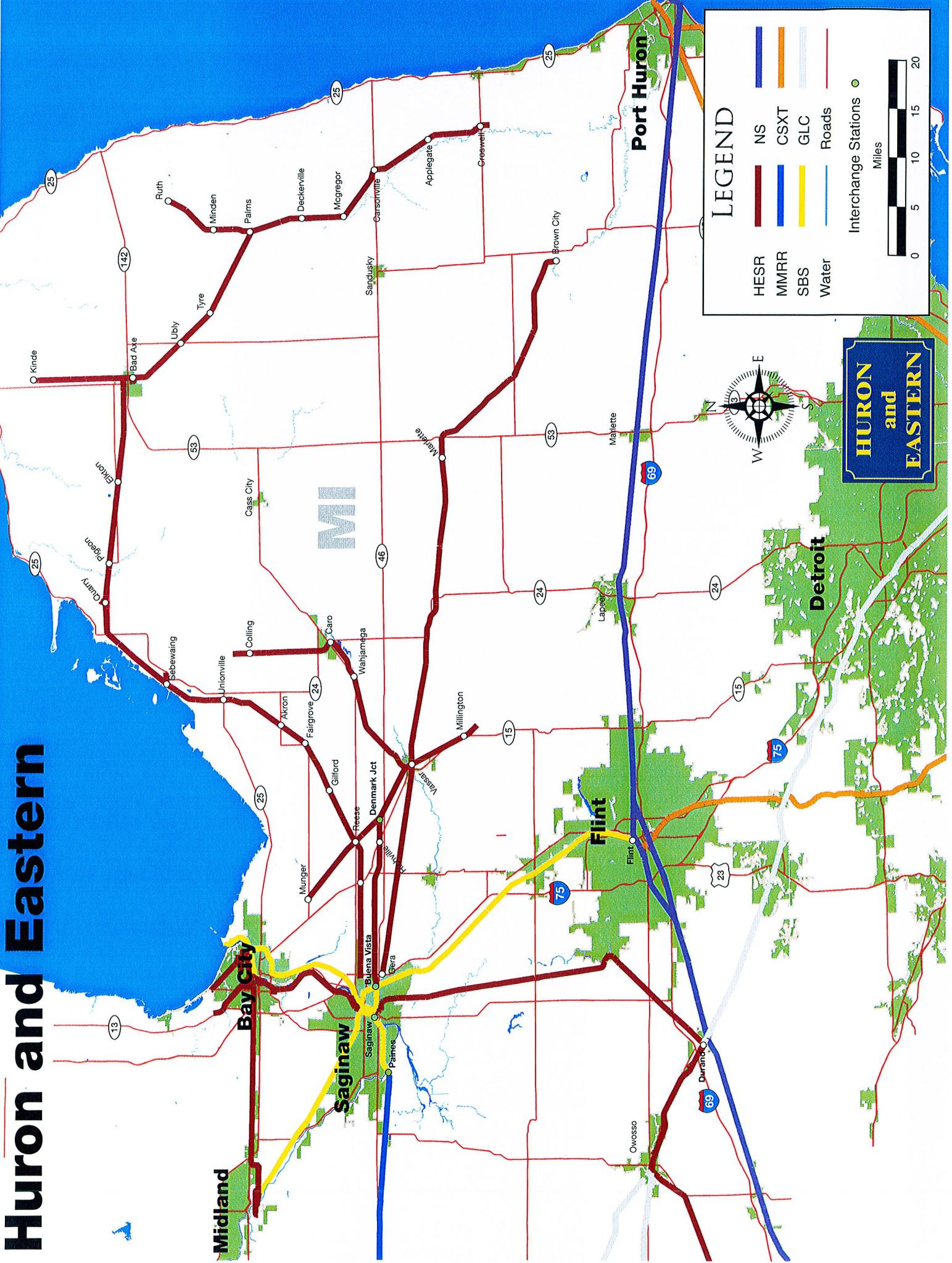
148

275

231

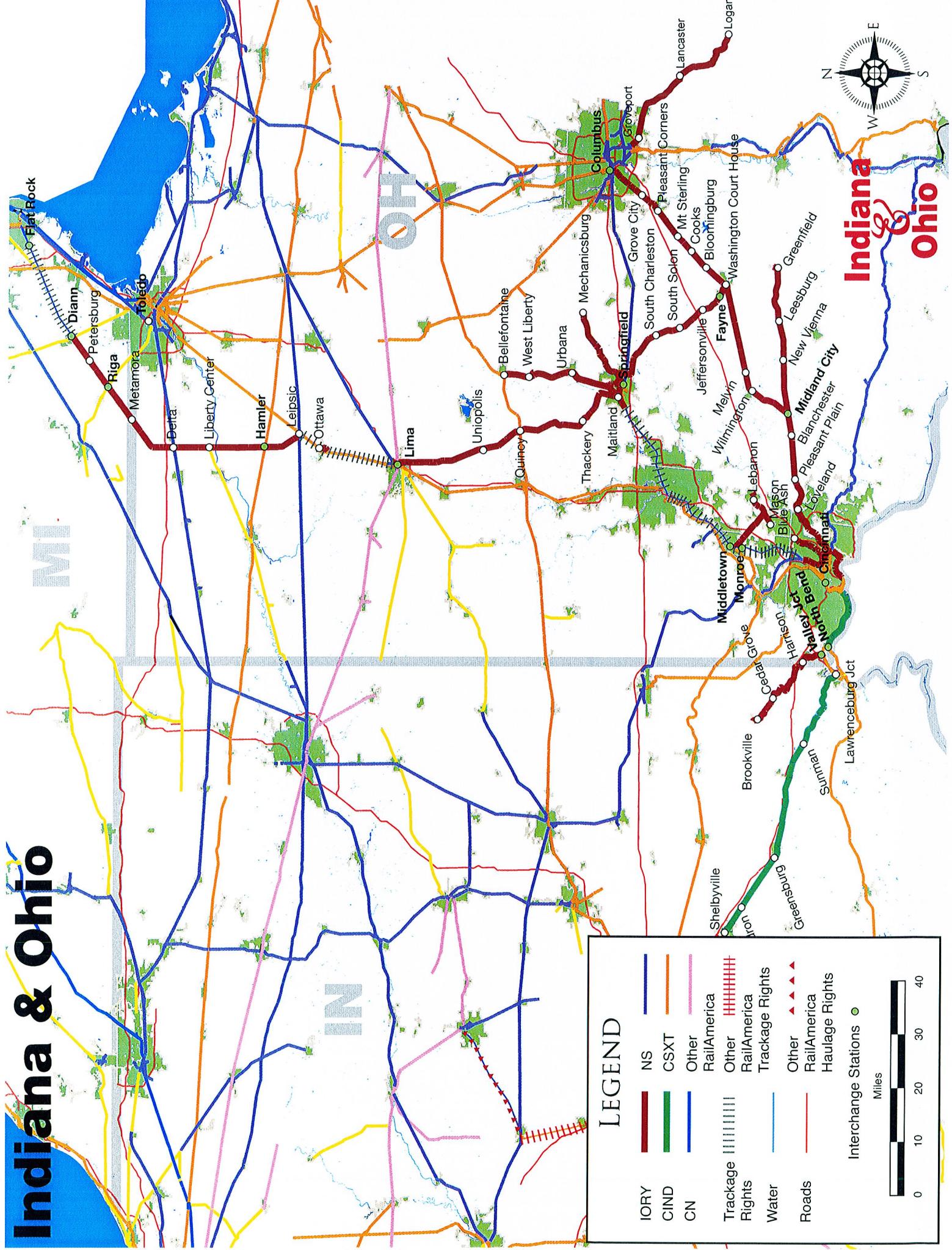
280

# Huron and Eastern



## HURON and EASTERN

# Indiana & Ohio



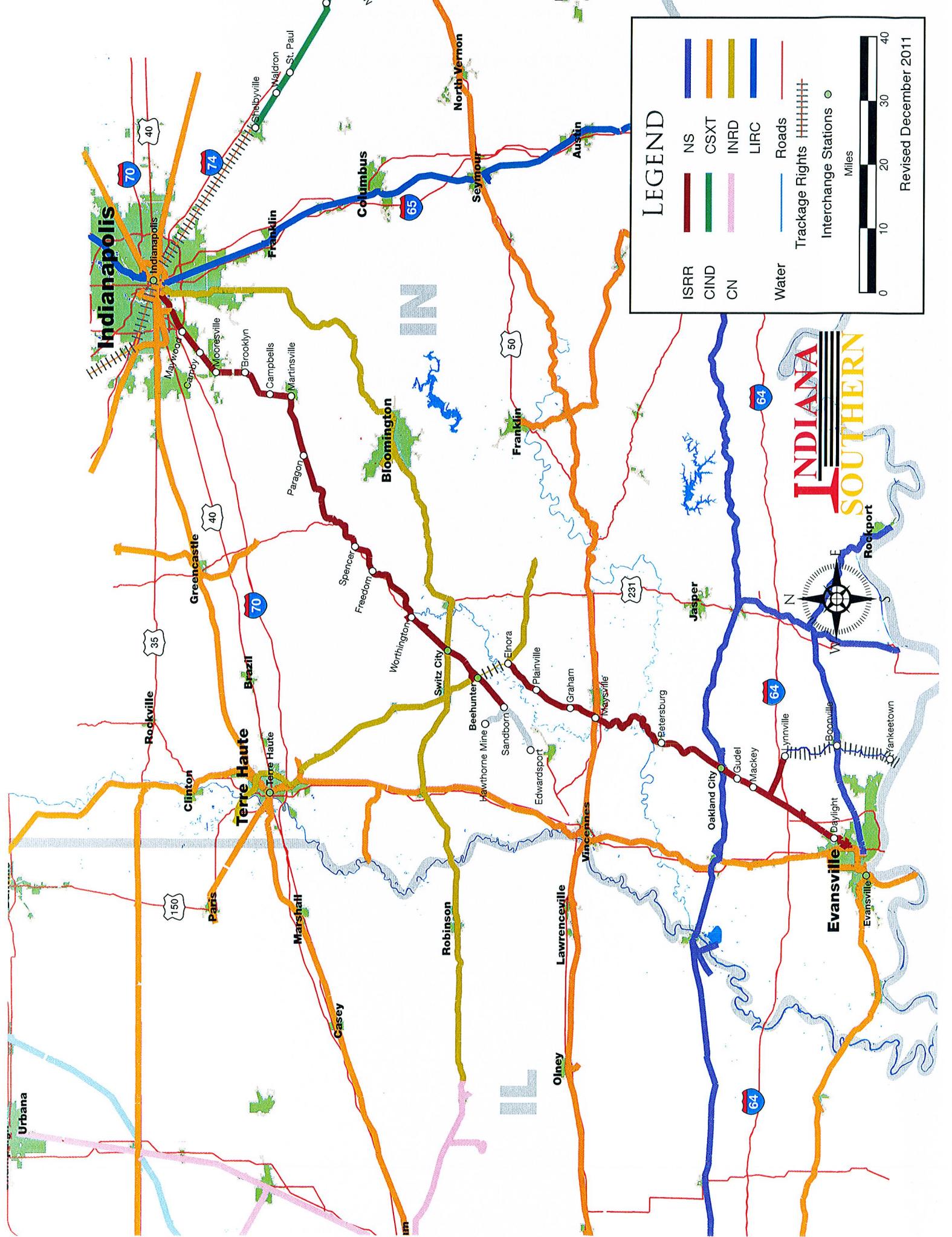
**LEGEND**

|                 |      |       |             |             |                 |                 |       |       |             |                |                      |                      |
|-----------------|------|-------|-------------|-------------|-----------------|-----------------|-------|-------|-------------|----------------|----------------------|----------------------|
| IORY            | NS   | CSXT  | Other       | RailAmerica | Other           | Trackage Rights | Water | Roads | Other       | RailAmerica    | Haulage Rights       | Interchange Stations |
| CIND            | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| CN              | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| Trackage Rights | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| Water           | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| Roads           | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| Other           | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| RailAmerica     | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |
| Haulage Rights  | CSXT | Other | RailAmerica | Other       | Trackage Rights | Water           | Roads | Other | RailAmerica | Haulage Rights | Interchange Stations | ●                    |

Miles

0 10 20 30 40





### LEGEND

|       |    |      |      |      |       |                 |                      |
|-------|----|------|------|------|-------|-----------------|----------------------|
| ISRR  | NS | CSXT | INRD | LIRC | Roads | Trackage Rights | Interchange Stations |
| CIND  |    |      |      |      |       | #####           | o                    |
| CN    |    |      |      |      |       |                 |                      |
| Water |    |      |      |      |       |                 |                      |

Miles  
0 10 20 30 40

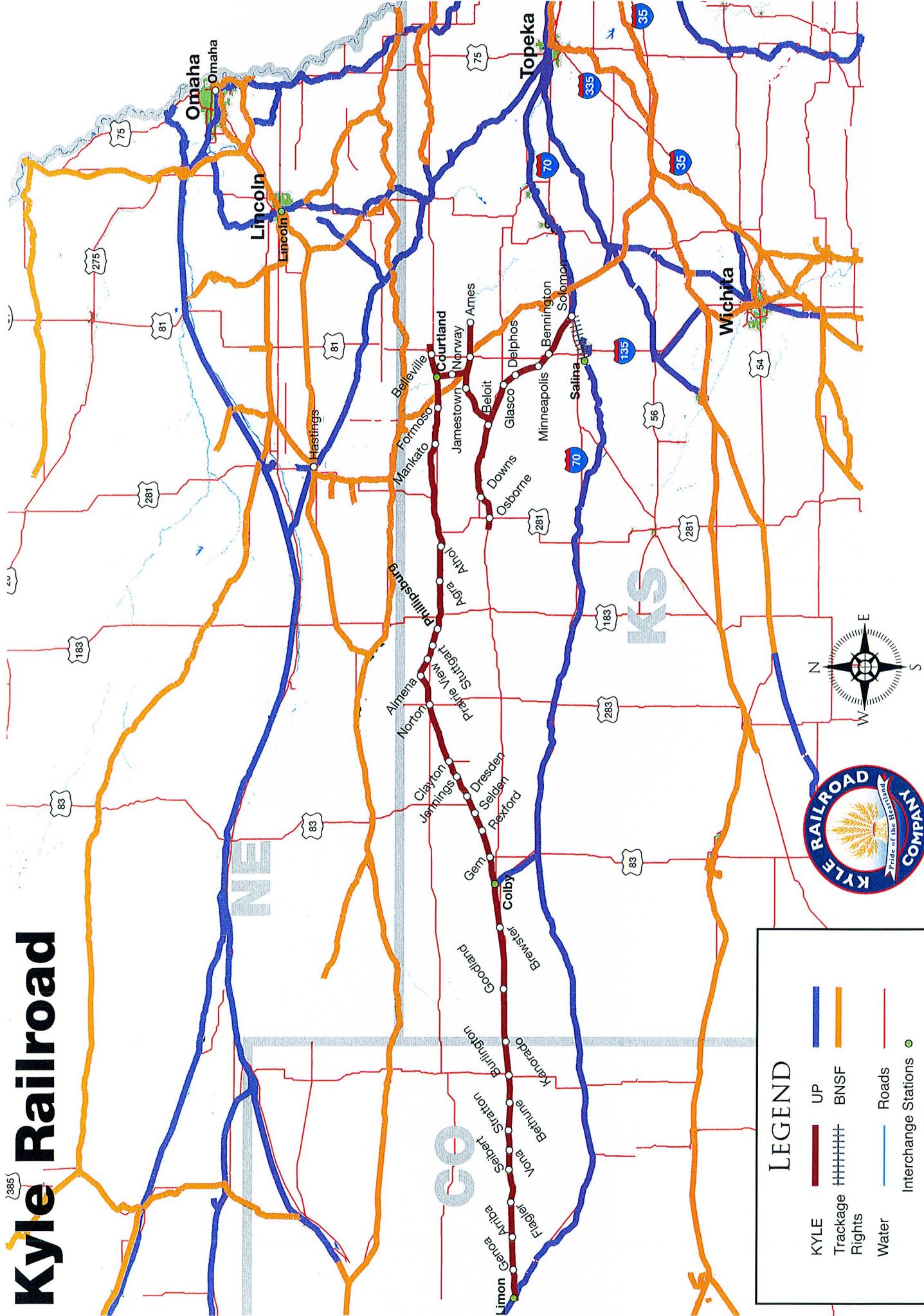
Revised December 2011

**INDIANA**  
**SOUTHERN**

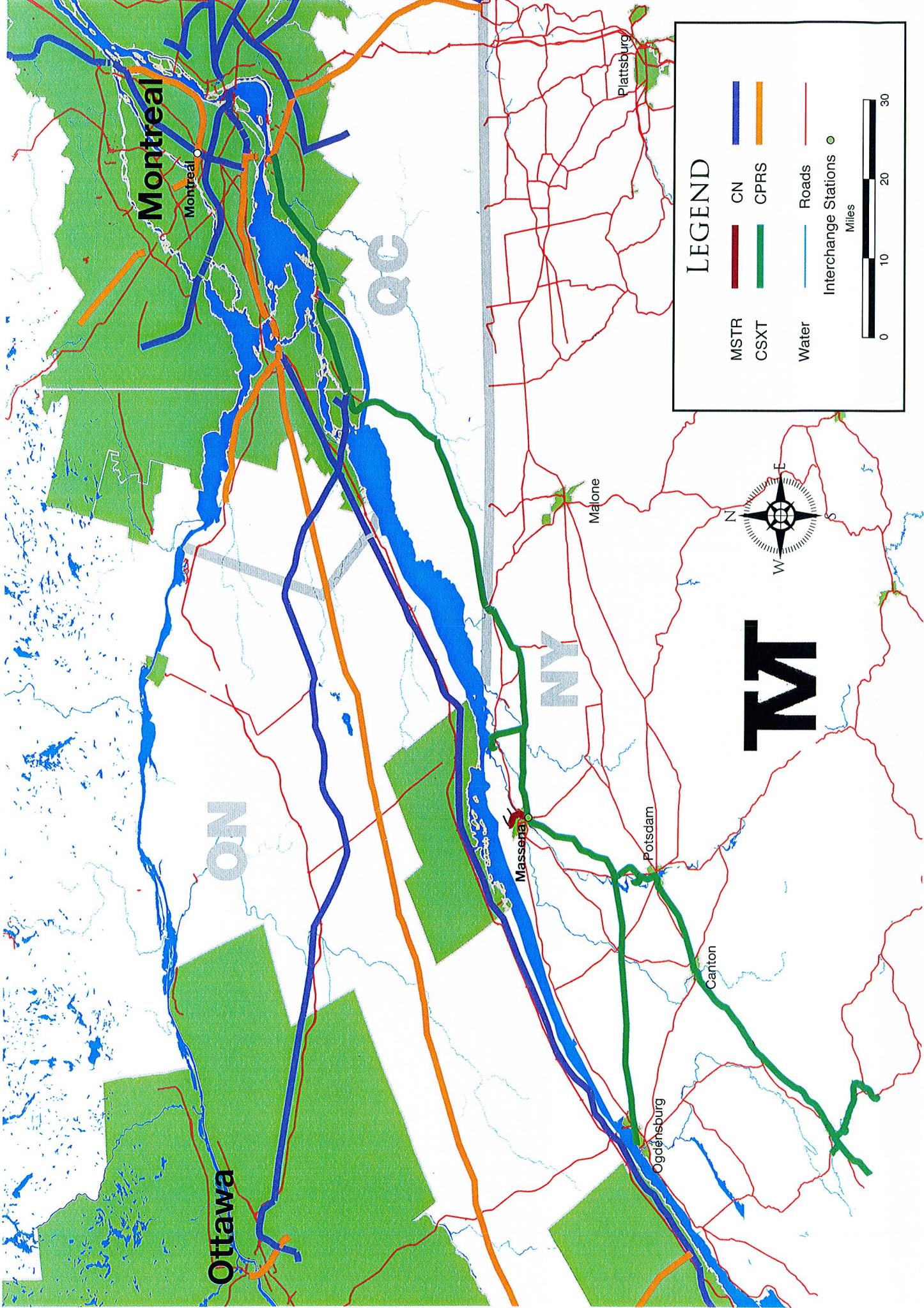




# Kyle Railroad

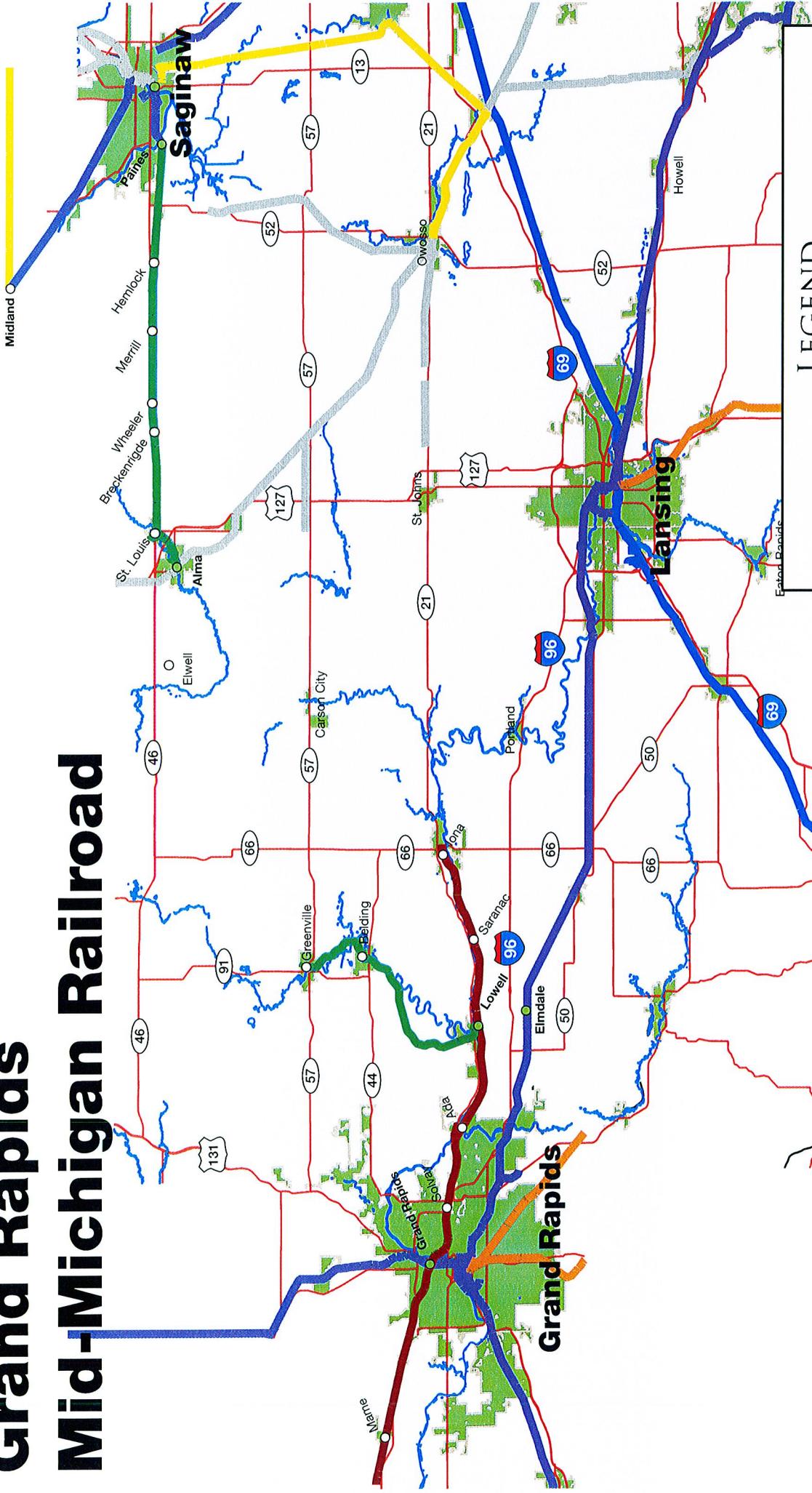


# Massena Terminal Railroad



# Grand Rapids

# Mid-Michigan Railroad

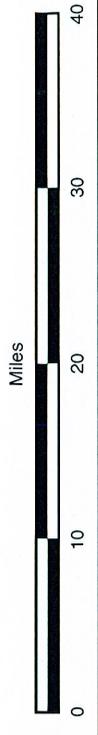


## LEGEND

- GR
- MMRR
- CN
- Water
- Interchange Stations
- CSXT
- NS
- TSBY
- HESR
- Roads

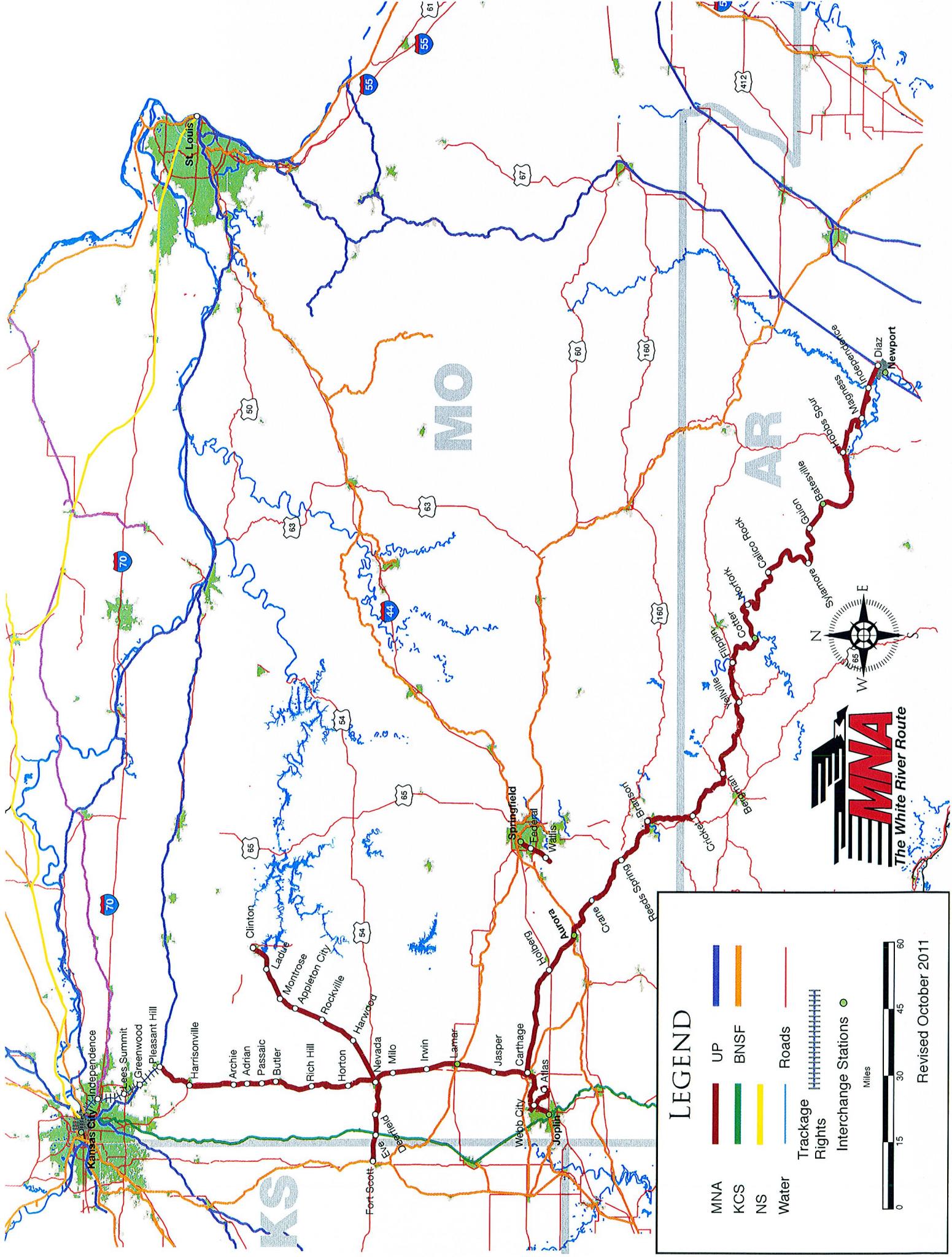


Michigan







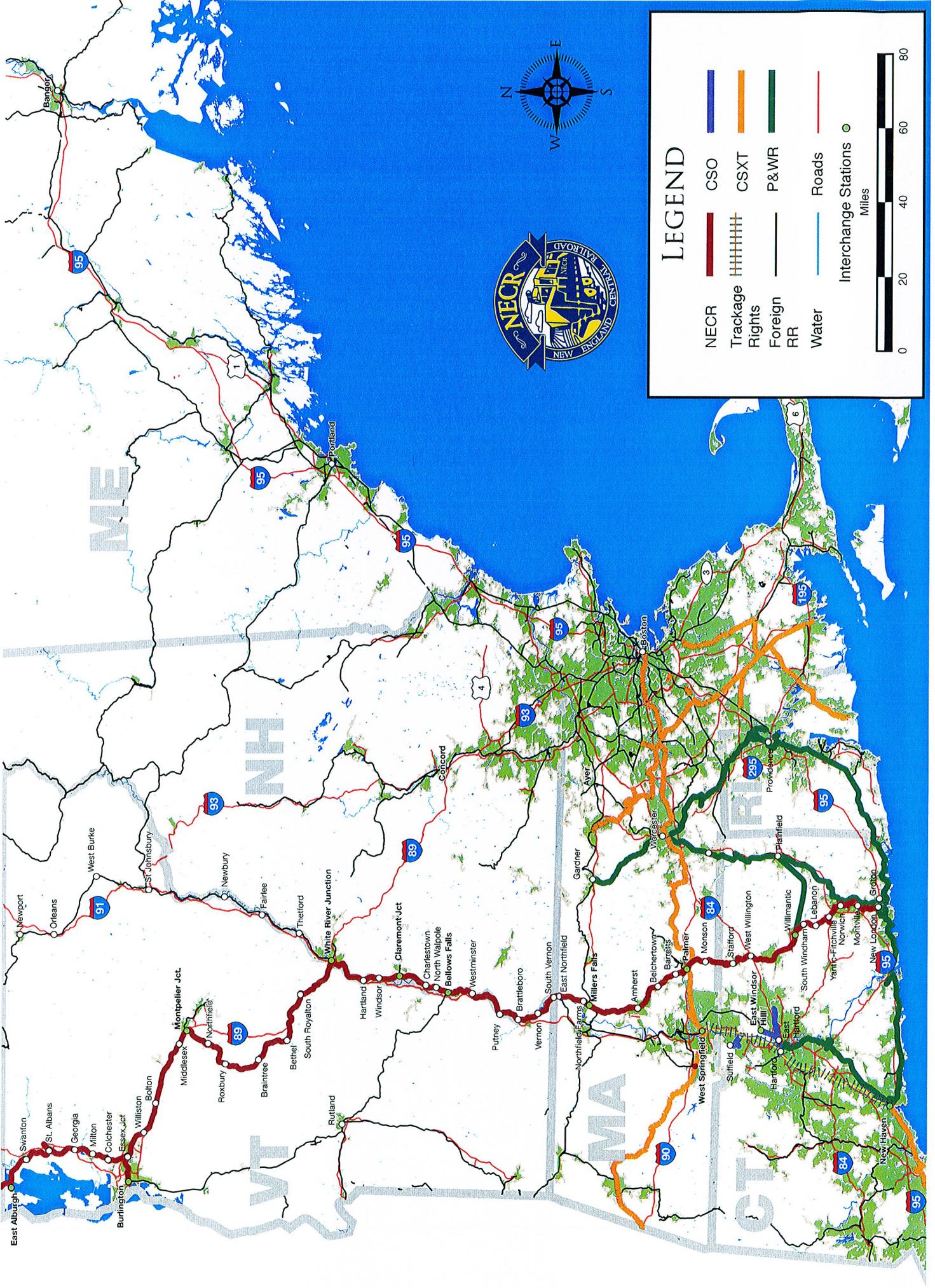


**LEGEND**

|                      |  |                 |  |
|----------------------|--|-----------------|--|
| MNA                  |  | UP              |  |
| KCS                  |  | BNSF            |  |
| NS                   |  | Roads           |  |
| Water                |  | Trackage Rights |  |
| Interchange Stations |  |                 |  |

Miles

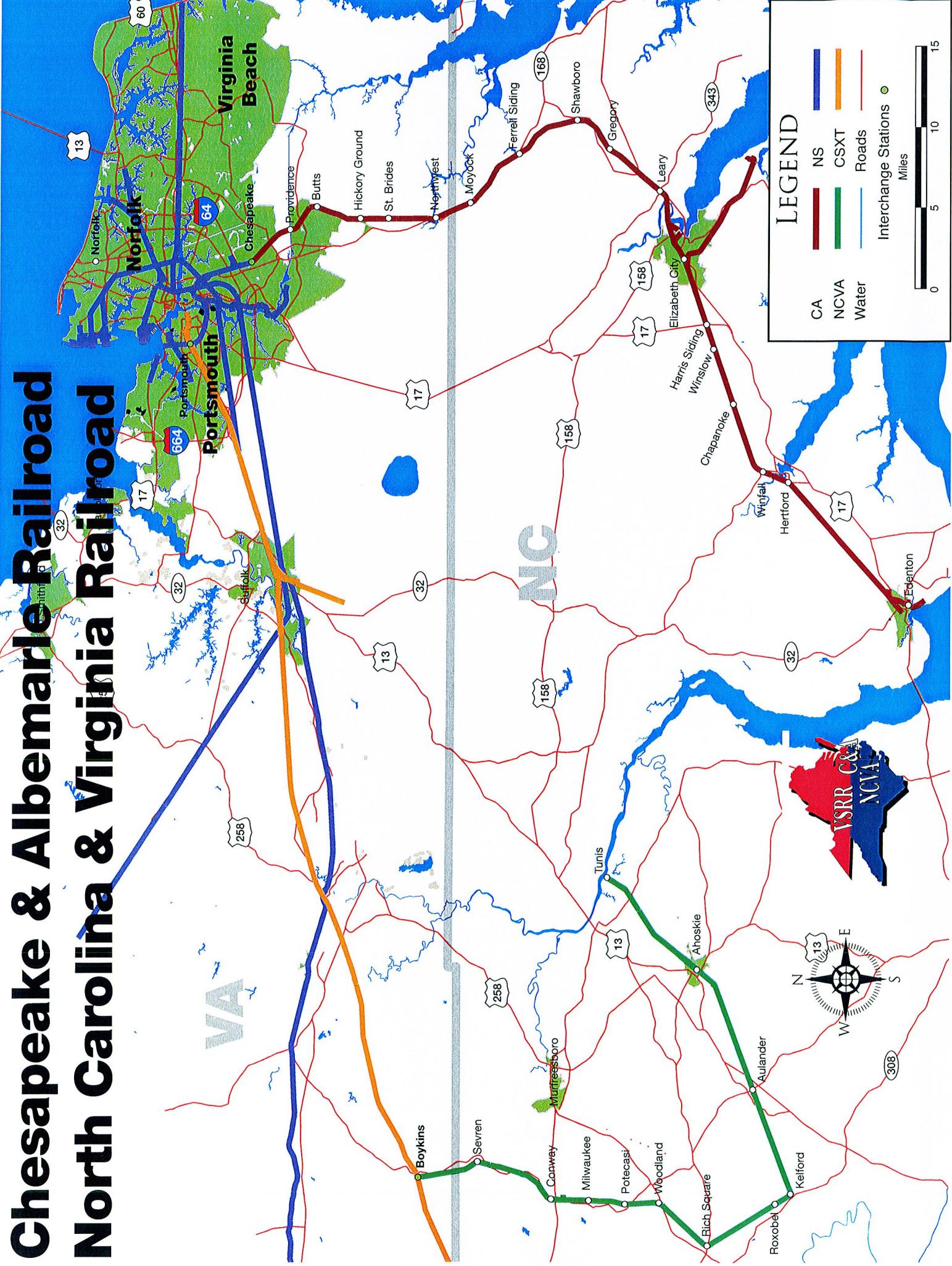
Revised October 2011



### LEGEND

- NECR —
  - Trackage Rights —
  - Foreign RR —
  - Water —
  - CSO —
  - CSXT —
  - P&WR —
  - Roads —
  - Interchange Stations ●
- Miles
- 0 20 40 60 80

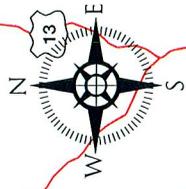
# Chesapeake & Albemarle Railroad North Carolina & Virginia Railroad



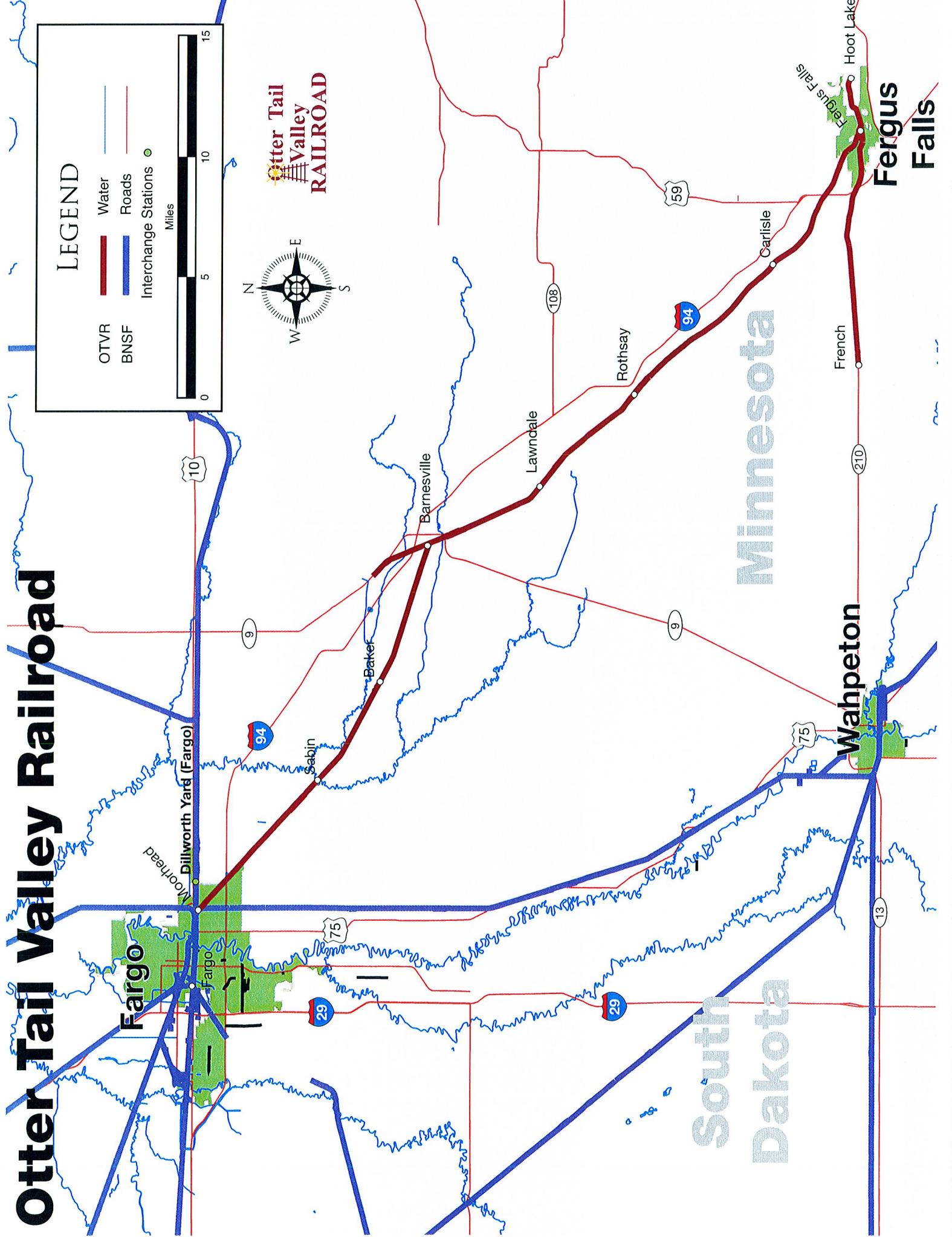
**LEGEND**

- CA (Dark Red Line)
- NS (Blue Line)
- NCVA (Green Line)
- CSXT (Orange Line)
- Roads (Red Line)
- Water (Blue Area)
- Interchange Stations (Green Circle)

Miles  
0 5 10 15

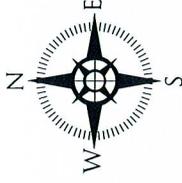


# Otter Tail Valley Railroad



## LEGEND

- OTVR
- BNSF
- Water
- Roads
- Interchange Stations



Otter Tail  
Valley  
RAILROAD

Minnesota

South  
Dakota

Fargo

Wahpeton

Fergus Falls

Dillworth Yard (Fargo)

Baker

Barnesville

Lawndale

Rothsay

Carlisle

French

Hoot Lake

10

9

75

29

29

9

59

108

94

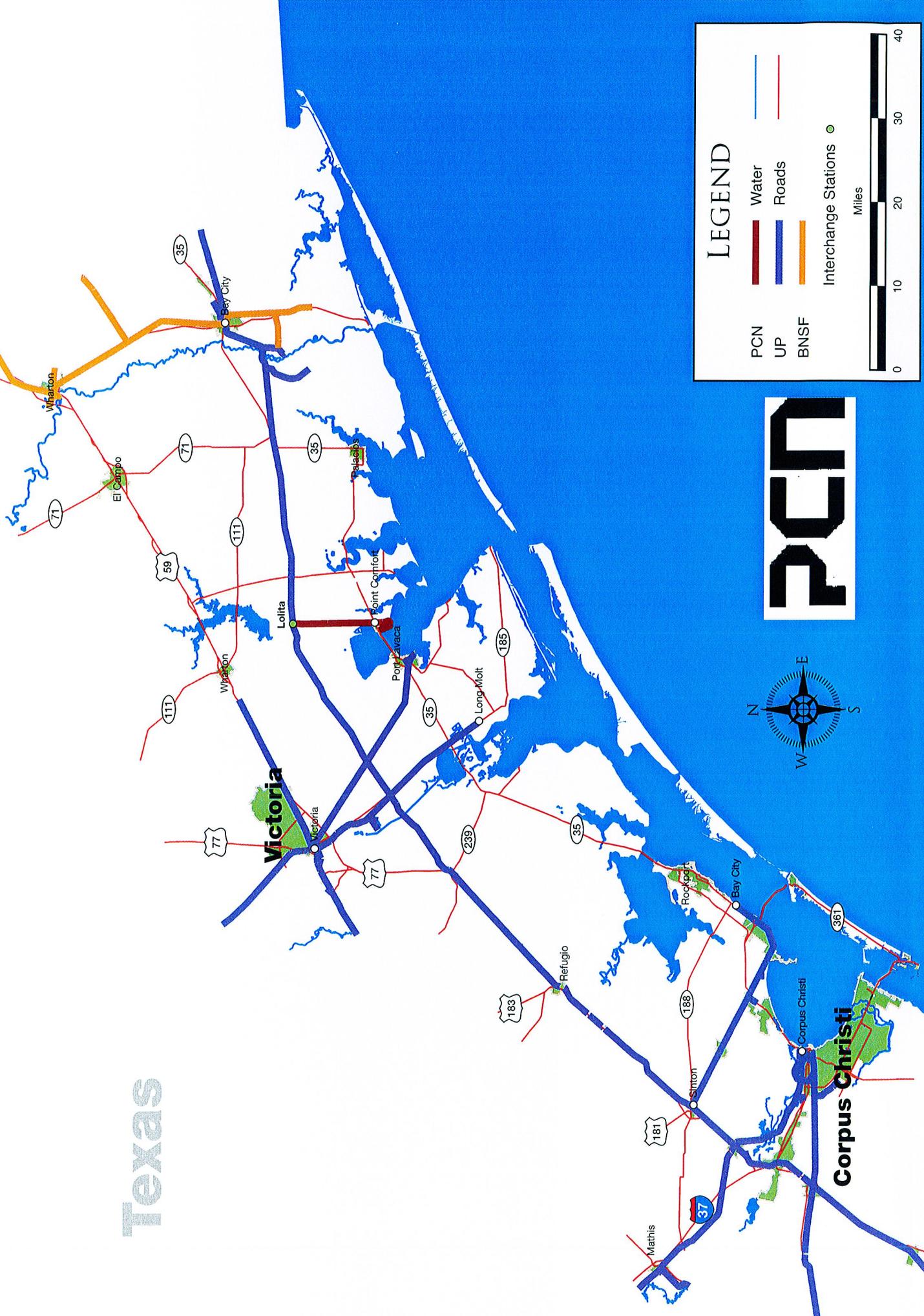
210

75

13

# Point Comfort and Northern Railroad

Texas

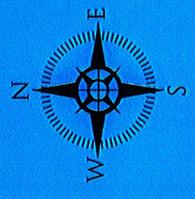


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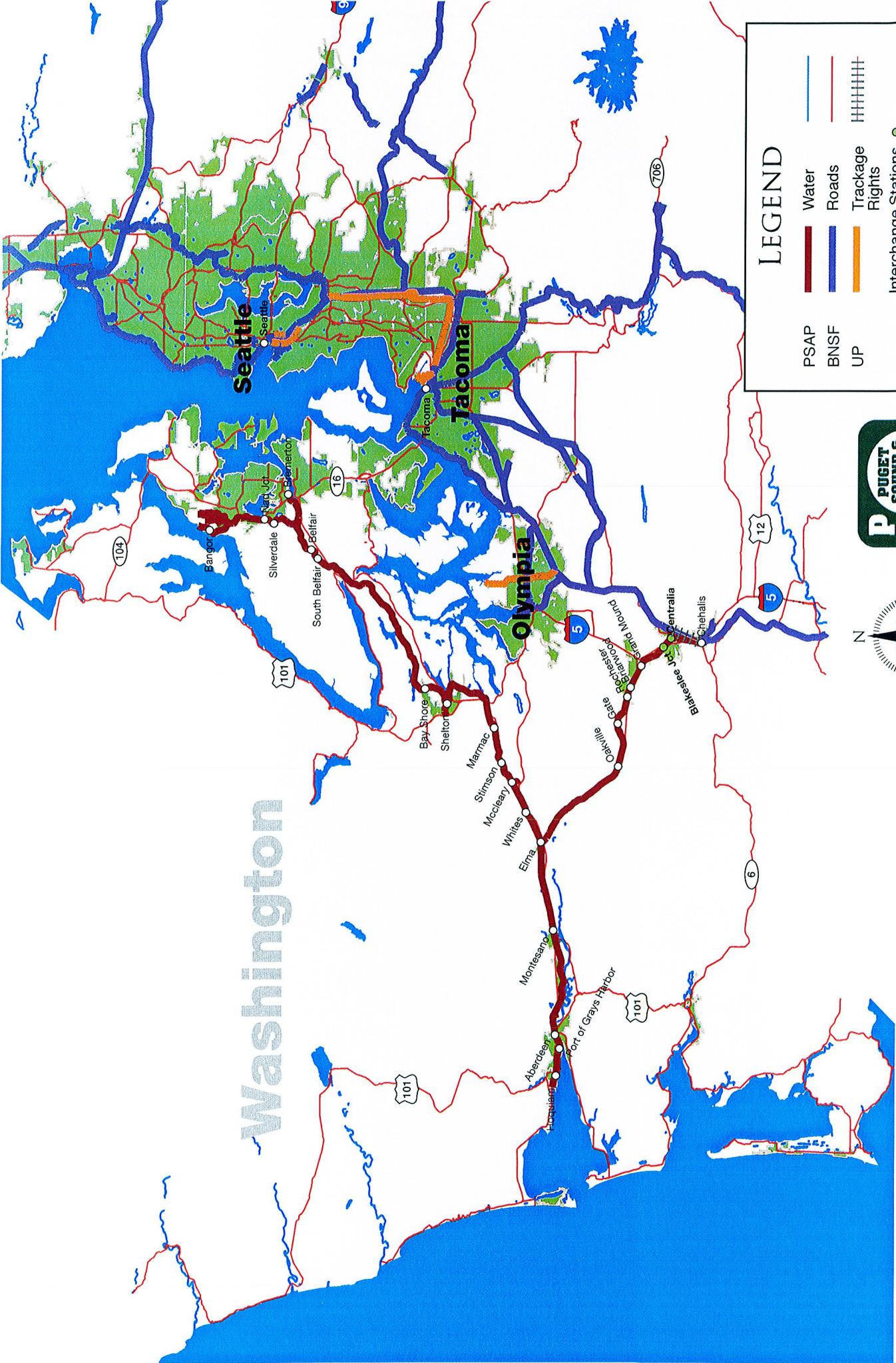
|      |                      |   |
|------|----------------------|---|
| PCN  | Water                | — |
| UP   | Roads                | — |
| BNSF | Interchange Stations | ● |

Miles

0 10 20 30 40



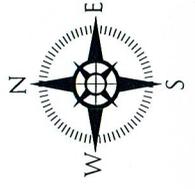
# Washington



### LEGEND

|                      |                 |
|----------------------|-----------------|
| PSAP                 | Water           |
| BNSF                 | Roads           |
| UP                   | Trackage Rights |
| Interchange Stations | Miles           |

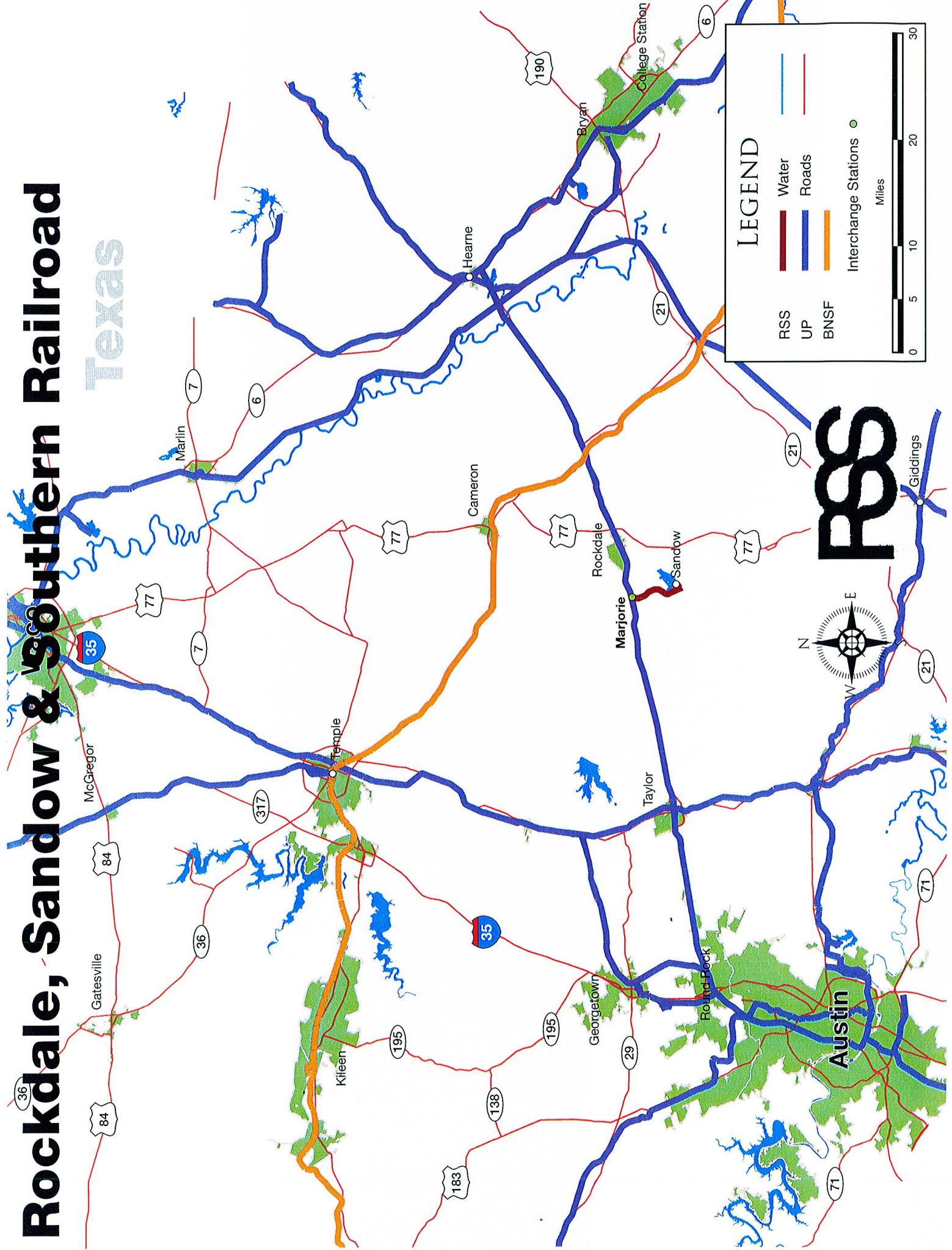
0 5 10 20 30



Revised September 2011

# Rockdale, Sandow & Southern Railroad

## Texas



### LEGEND

- RSS
- UP
- BNSF
- Water
- Roads
- Interchange Stations



# RSS

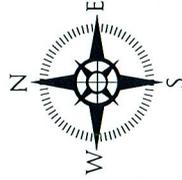
Miles



# San Diego Imperial Valley

California

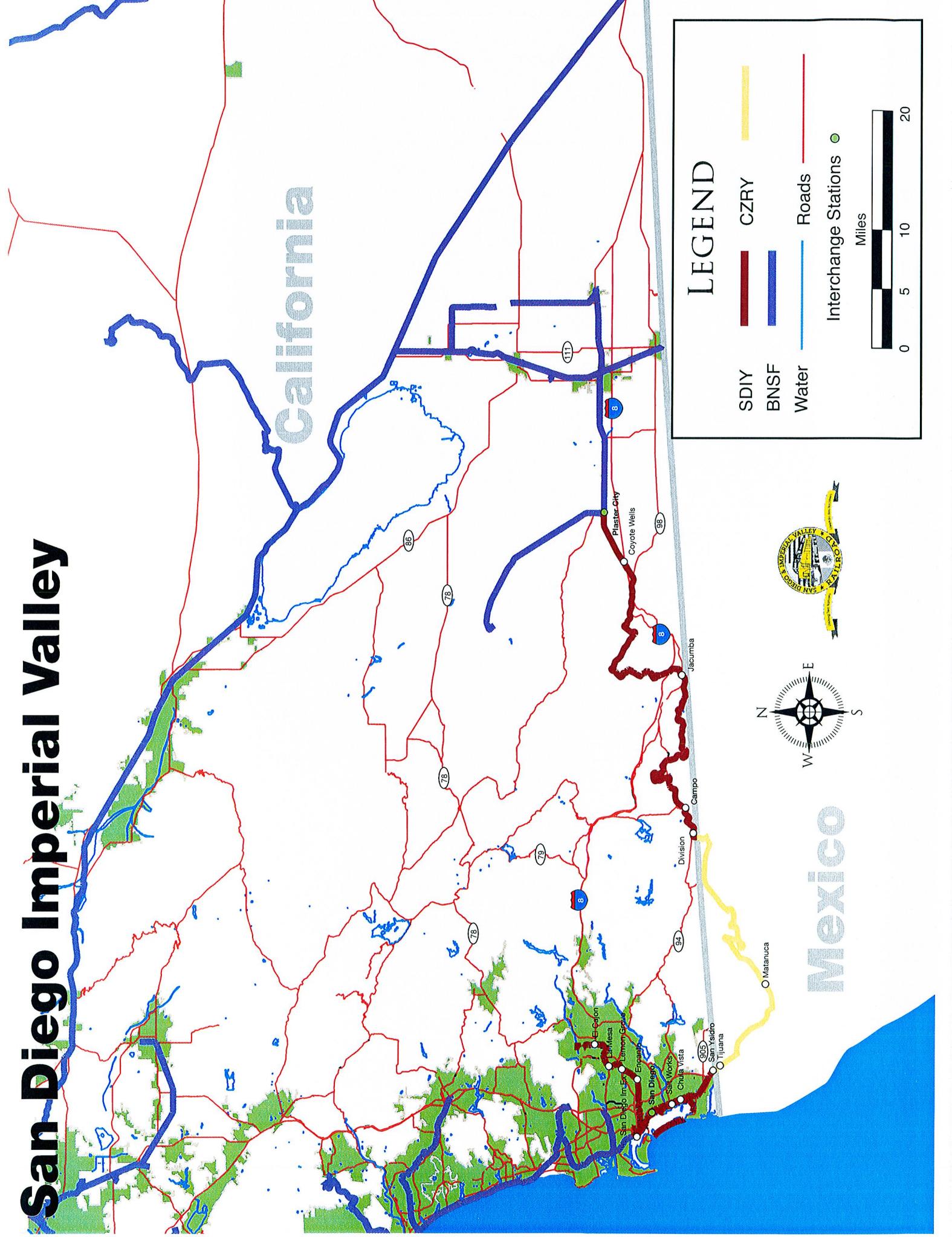
Mexico



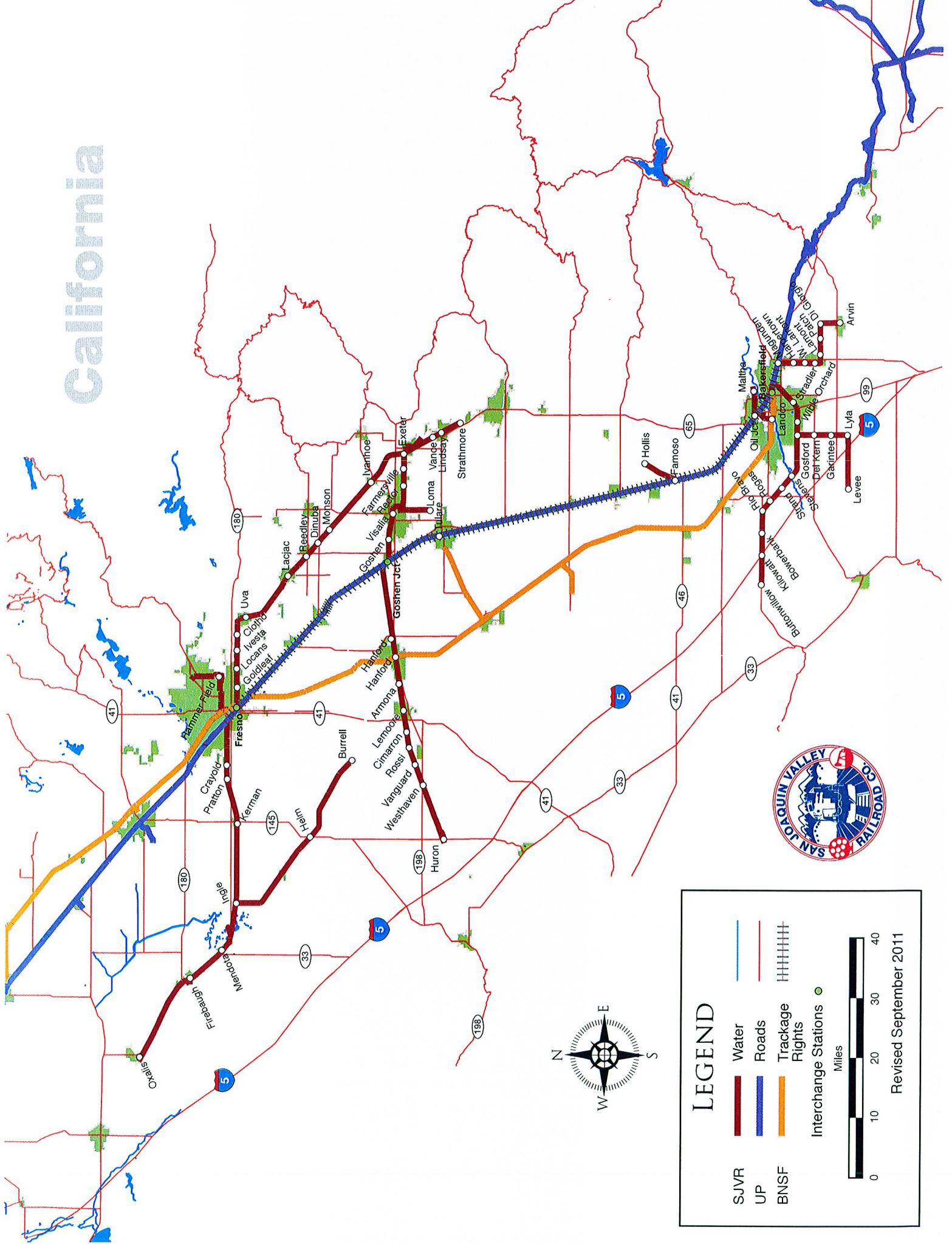
### LEGEND

|       |  |                      |  |
|-------|--|----------------------|--|
| SDIY  |  | CZRY                 |  |
| BNSF  |  | Roads                |  |
| Water |  | Interchange Stations |  |

Miles



# California



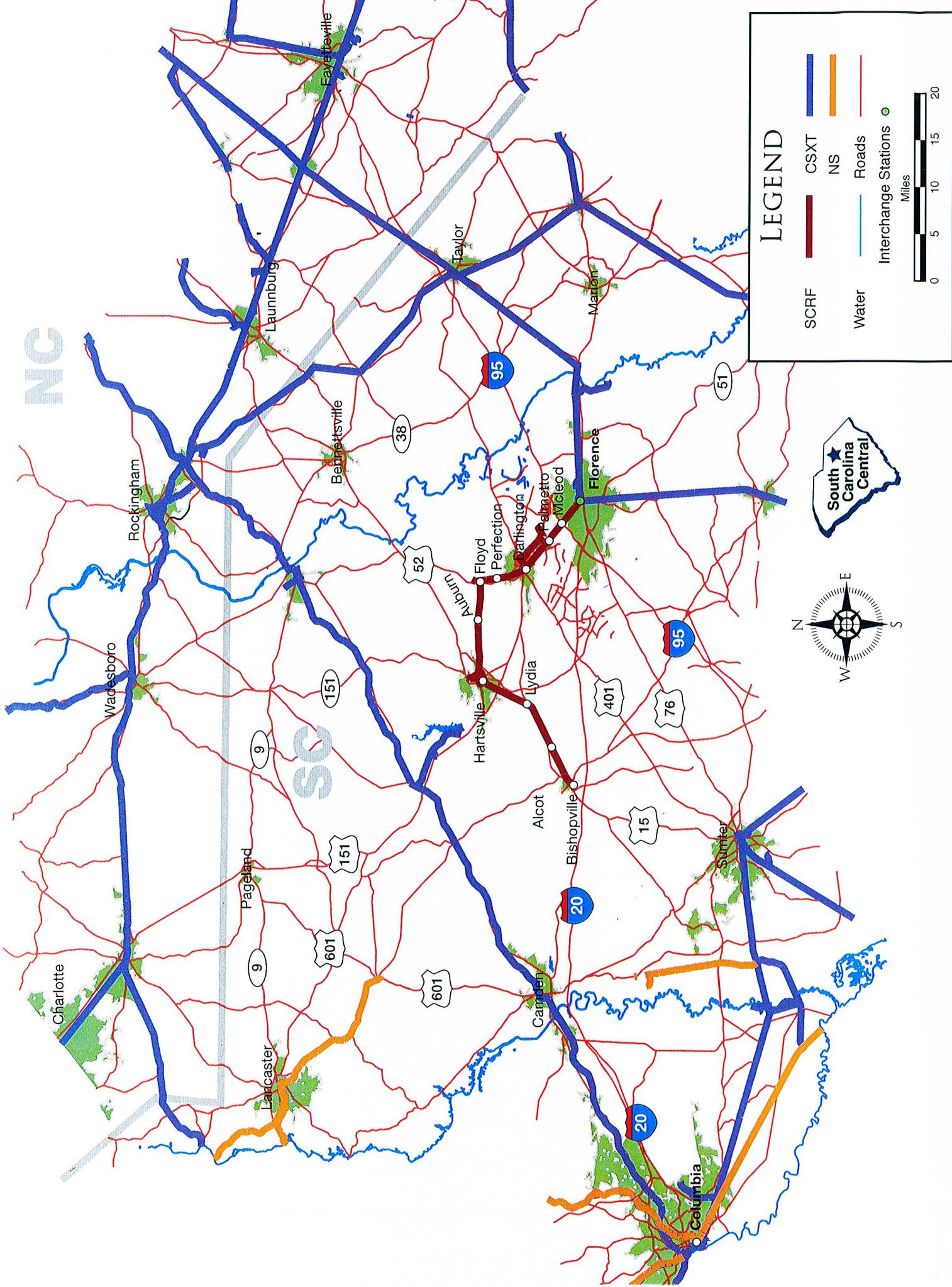
**LEGEND**

- SJVR — Water —
- UP — Roads —
- BNSF — Trackage Rights - - - - -
- Interchange Stations ●

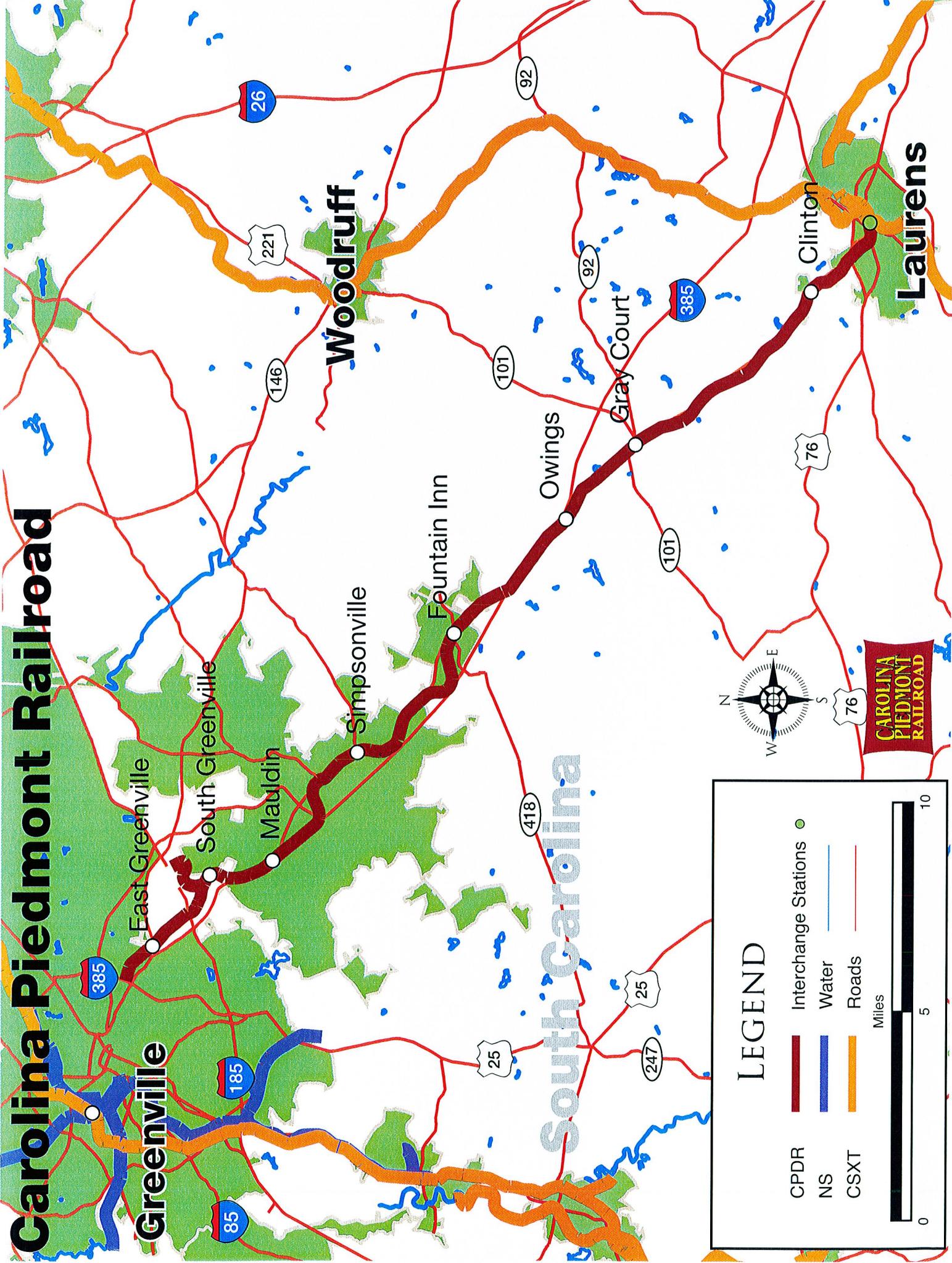
Miles

0 10 20 30 40

Revised September 2011



# Carolina Piedmont Railroad



**LEGEND**

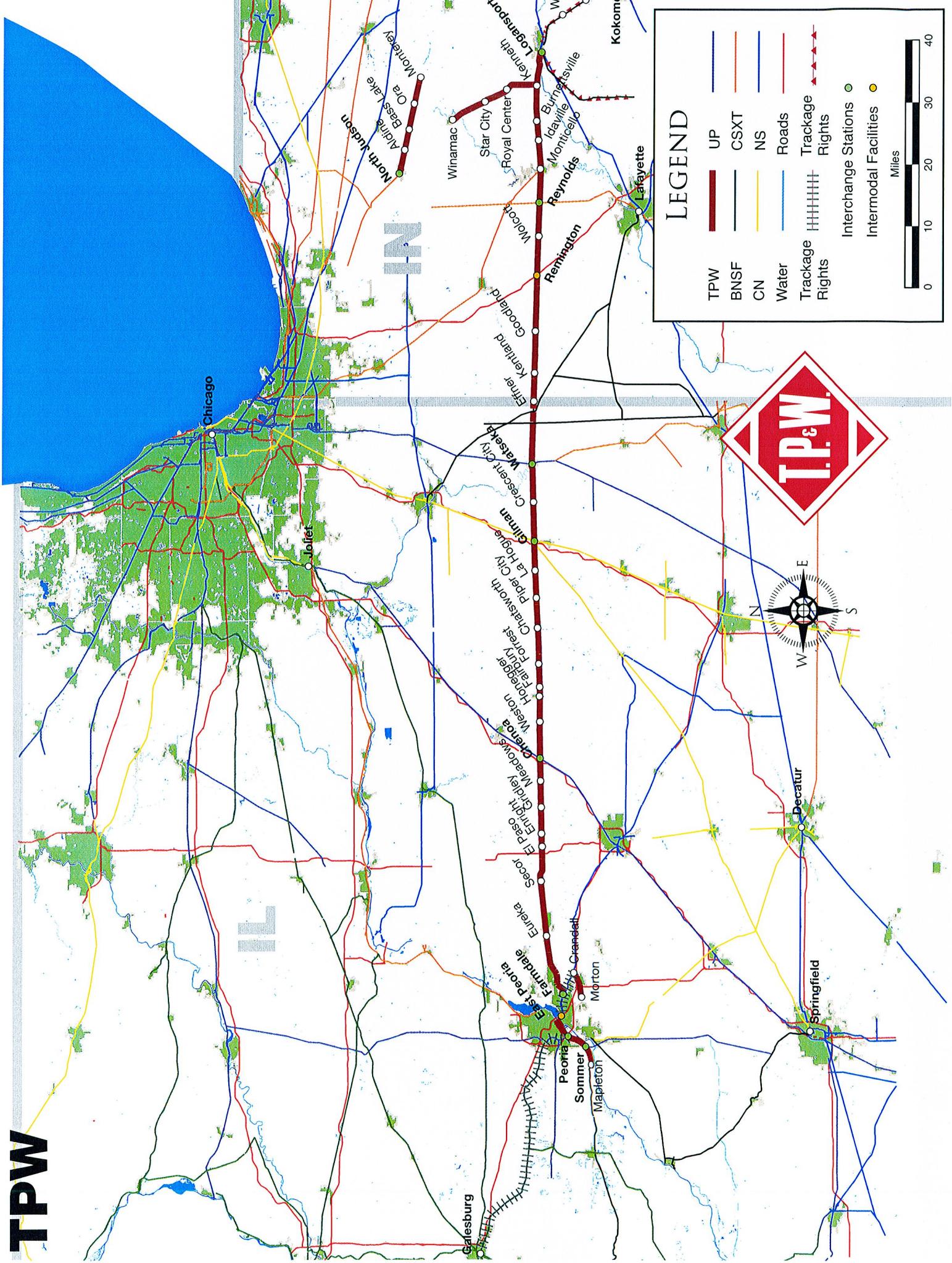
- CPDR
- NS
- CSXT
- Interchange Stations
- Water
- Roads

Miles

0 5 10



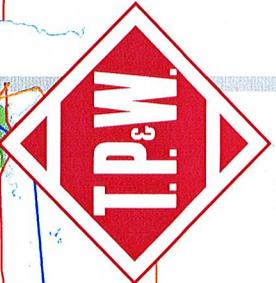
# TPW



### LEGEND

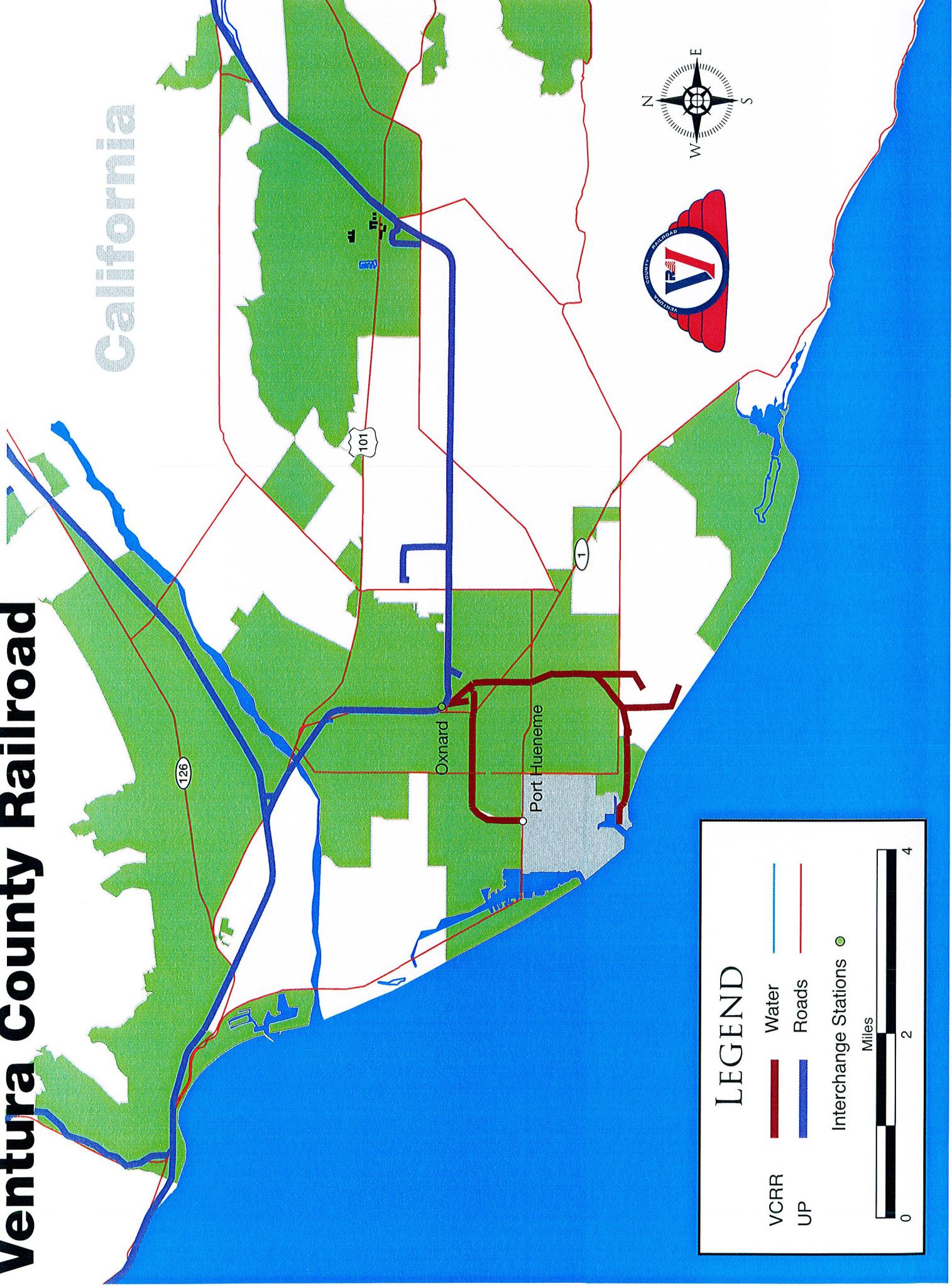
|                      |                       |
|----------------------|-----------------------|
| TPW                  | UP                    |
| BNSF                 | CSXT                  |
| CN                   | NS                    |
| Water                | Roads                 |
| Trackage             | Trackage Rights       |
| Interchange Stations | Intermodal Facilities |

Miles  
0 10 20 30 40



# Ventura County Railroad

California



## LEGEND

- VCRR
  - UP
  - Water
  - Roads
  - Interchange Stations
- Miles
- 0 2 4



# Florida East Coast Railway

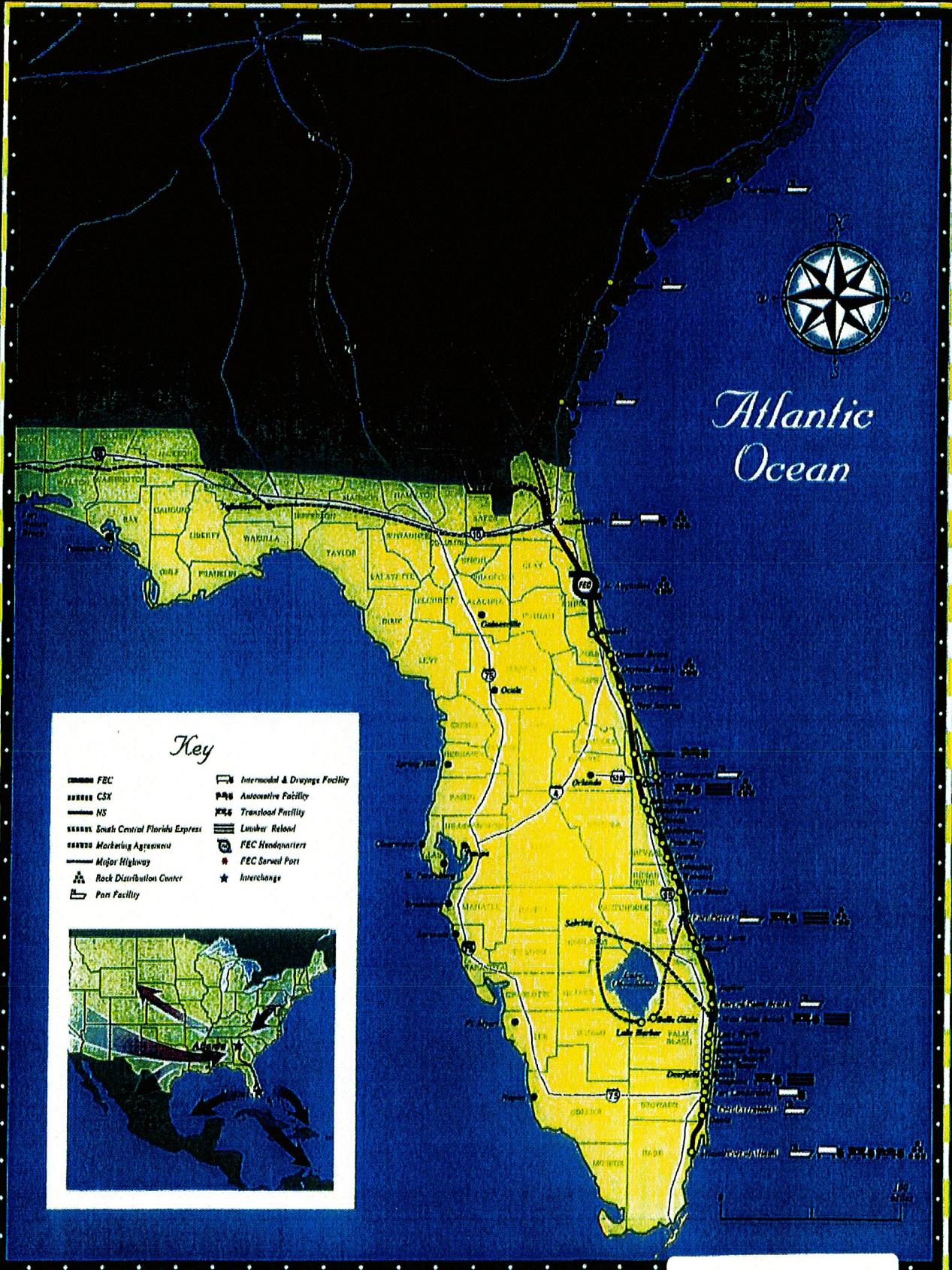
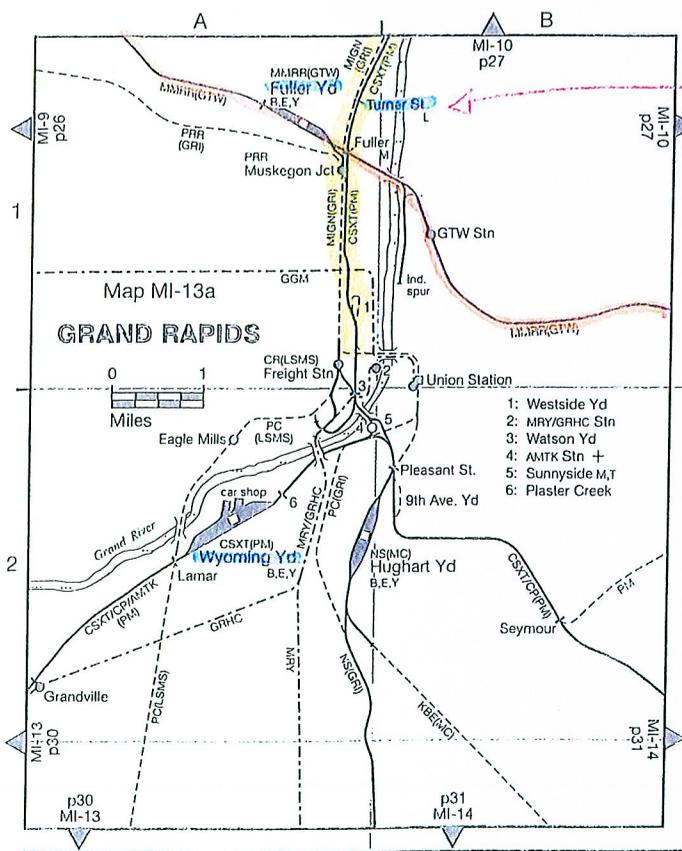
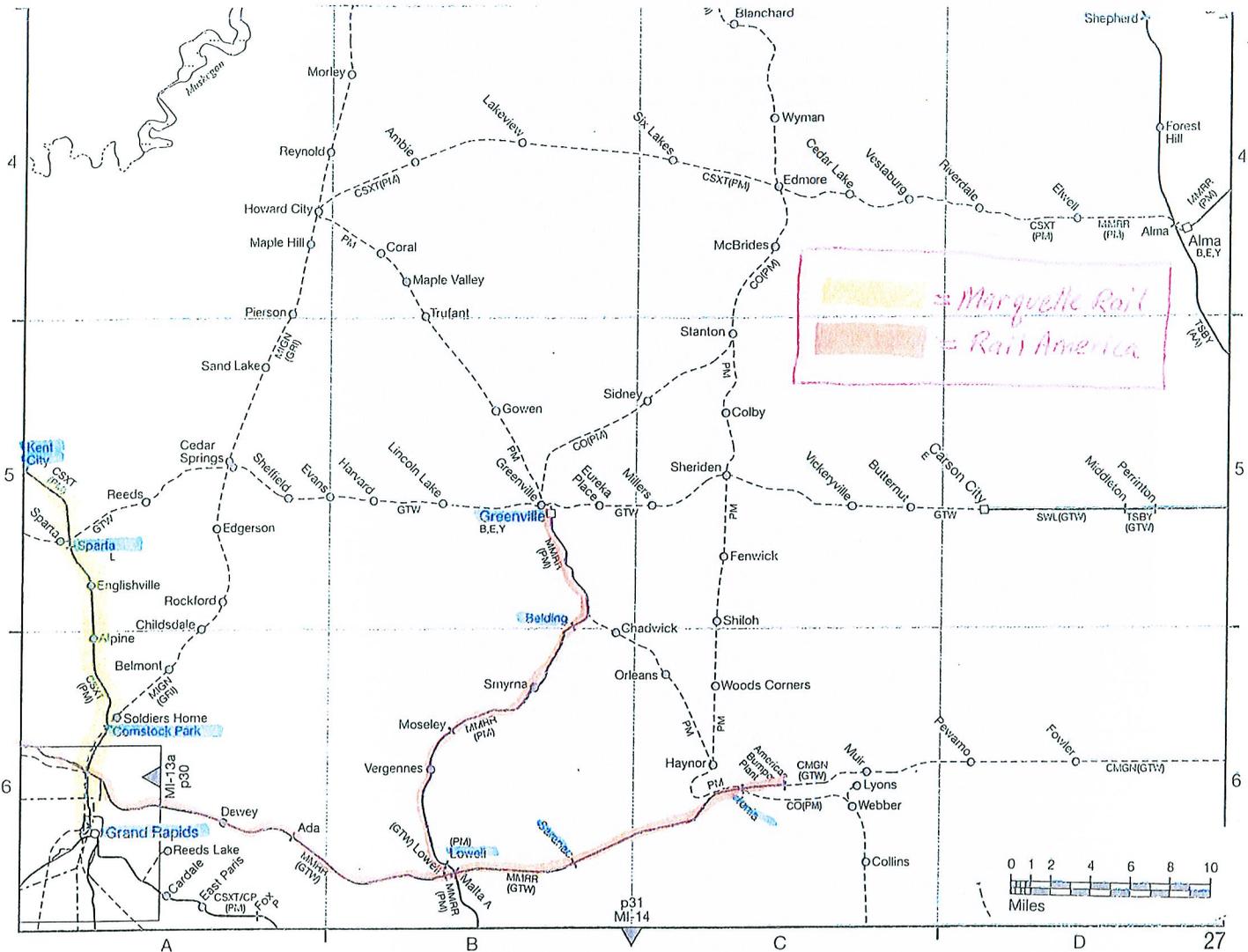


EXHIBIT 1-A

**EXHIBIT B1 – MARQUETTE RAIL, LLC MAPS**





*M&T ends at Turner  
- gets to Wyoming Yard  
on trackage.*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 35592

---

RAILAMERICA, INC., PALM BEACH HOLDING, INC., RAILAMERCIA  
TRANSPORTATION CORP., RAILTEX, INC., FORTRESS INVESTMENT GROUP, LLC,  
AND RR ACQUISITION HOLDING, LLC  
-CONTROL EXEMPTION-MARQUETTE RAIL, LLC

---

VERIFIED NOTICE OF EXEMPTION  
OR IN THE ALTERNATIVE PETITION FOR EXEMPTION AND EXPEDITED HANDLING

---

VOLUME II – PUBLIC REDACTED PURCHASE AND SALE AGREEMENT

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Senior Vice President & General Counsel  
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Attorneys for: RailAmerica, Inc.,  
Palm Beach Holding, Inc.,  
RailAmericia Transportation Corp.,  
RailTex, Inc., Fortress Investment Group,  
LLC, and RR Acquisition Holding, LLC

Dated: February 3, 2012

**PURCHASE AND SALE AGREEMENT**  
**BY AND AMONG**  
**MARQUETTE RAIL, LLC,**  
**MEMBERS OF MARQUETTE RAIL, LLC**  
**AND**  
**RAILAMERICA TRANSPORTATION CORP.**  
**DATED AS OF JANUARY 31, 2012**

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## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT, dated as of January 31, 2012 (this "Agreement"), is made by and among Marquette Rail, LLC, a Delaware limited liability company (the "Company"), Marquette Rail Corp. ("Marquette"), Farmrail System, Inc., Transportation Solutions, Inc., RC Rail Investments LLC, Progressive Rail, Inc., JG-MQT-RR Holdings, LLC and Richard W. Jany (together, "Sellers" and each a "Seller"), and RailAmerica Transportation Corp., a Delaware corporation ("Buyer").

Certain terms used in this Agreement are defined in Section 12.

### RECITALS

Sellers own, beneficially and of record, all of the issued and outstanding Membership Interests (as defined in the Company Operating Agreement) of the Company (collectively, the "Interests"). The Interests constitute all of the issued and outstanding "limited liability company interests" (as defined in the DLLCA) of the Company.

Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Interests on the terms and conditions and for the consideration provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties made herein and of the mutual benefits to be derived herefrom, the parties hereto agree as follows:

#### Section 1. Closing; Payments.

1.1 Closing and Payment. The closing of the sale and purchase of the Interests and of the other transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Freeborn & Peters LLP, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606, at 10:00 a.m. Central time on the date which is five (5) Business days after the satisfaction (or written waiver) of the conditions precedent set forth in Section 7 of this Agreement, or at such other place, date and time as the parties hereto may agree in writing (the "Closing Date"). At the Closing, the following shall occur:

(a) Sellers shall deliver to Buyer or an Affiliate of Buyer all of the Interests. Each Seller shall deliver its Interests to Buyer free and clear of any Liens.

(b) Buyer shall deliver to the Sellers an amount equal to (i) (the "Purchase Price"), subject to increase or decrease as a result of any Closing Adjustment pursuant to Section 1.4(b), less (ii) the amount to be delivered to the Escrow Agent pursuant to Section 1.1(c), in cash by wire transfer of immediately available funds in accordance with the wire transfer instructions of the Sellers delivered to the Buyer at least three (3) days prior to the Closing. The cash payment shall be allocated to each Seller as set forth on Schedule 1.1(b) to this Agreement, with the respective allocated amount delivered to each such Seller by wire transfer of immediately available funds to such accounts as such Seller shall have designated in writing to Buyer at least three business days prior to the scheduled

Closing Date. The Purchase Price shall be further subject to a Post Closing adjustment in accordance with Section 1.4 below.

(c) On the Closing Date, the Buyer shall pay to the Escrow Agent by wire transfer of readily available funds for further distribution by the Escrow Agent in accordance with the escrow agreement attached hereto as Exhibit A (the "Escrow Agreement") that portion of the Purchase Price equal to \_\_\_\_\_ (the "Escrow Fund") in order to provide the sole source for the payment of any indemnification of the Buyer pursuant to Section 10, except as otherwise provided in Section 10. The Escrow Agreement shall provide for the release from escrow of the Escrow Fund upon expiration of the Escrow Period to the extent no claims are made by the Buyer on or before such date in accordance with Section 10.1. Any distributions from the Escrow Fund for the benefit of the Sellers shall be distributed to the Sellers listed on, and based on the percentages set forth on Schedule 1.1(c) (the "Escrow Allocation Schedule").

## 1.2 Tax Treatment.

(a) It is agreed and understood that the parties hereto shall treat the transactions contemplated by this Agreement in accordance with Revenue Ruling 99-6, 1999-1 C.B. 432 (Situation 2) as a sale by each Seller of his respective membership interest in the Company and a purchase by Buyer of the assets of the Company and the assumption by Buyer of all of the Company's liabilities (other than liabilities for which Buyer may be indemnified pursuant to this Agreement). The parties shall treat such transactions as occurring on the close of business on the Closing Date. Each of the parties agree to file all Tax Returns in accordance with such treatment and shall not take any position inconsistent therewith, except as required by Law.

(b) The parties agree that the Purchase Price, the liabilities of the Company and any other relevant items shall be allocated among the assets of the Company held as of the Closing Date (the "Assets") in accordance with Section 1060 of the Code and the Treasury regulations thereunder. Within 60 days after the Closing Date, Buyer shall prepare and deliver to the Seller Representative an allocation schedule allocating the Purchase Price, the Company's liabilities and any other relevant items among the Assets (the "Allocation Schedule"). The Allocation Schedule as finally determined pursuant to this Section 1.2(b) shall be binding on the parties for Tax and financial accounting purposes, the parties shall file all Tax Returns in a manner consistent with such Allocation Schedule, and no party shall take any position that is inconsistent with the Allocation Schedule in any audit, examination or other proceeding relating to Taxes unless otherwise required by Law. Appropriate adjustments shall be made to the allocation set forth in the Allocation Schedule, to reflect any payments subsequently made pursuant to Sections 1.4, 7.1(f) and/or Section 10.

1.3 Allocation of Payments between Sellers. Sellers represent and warrant that the allocations of payments made to Sellers pursuant to this Agreement and described on Schedule 1.1(b) hereto are consistent with their economic rights relating to their ownership of the Company under the current limited liability company operating agreement of the Company.

1.4 Closing Adjustment: Post Closing Adjustment.

(a) For purposes of this Section 1.4, "Closing Working Capital" shall mean the Company's (v) Non-Cash Working Capital excluding inventory (positive or negative) and deferred Tax assets, excluding deferred Tax liabilities that will remain unadjusted through December 31, 2012, plus (w) Cash and Cash Equivalents, less (x) Net Debt, as more fully described on Schedule 1.4(a) hereto, less (y) the accruals agreed upon by Sellers and Buyer, to the extent not included in Non-Cash Working Capital, as more fully described on Schedule 1.4(a), less (z) any accrued or accruable transaction expenses of the Company or the Sellers not paid on or prior to the Closing Date and paid or payable by the Company after the Closing Date. For purposes of this Section 1.4, "Closing Adjustment" shall mean the difference, if any, between (i) the Estimated Closing Working Capital, as determined in accordance with the procedures set forth below, and (ii) negative ("Target Working Capital").

(b) Closing Adjustment.

(i) At least five (5) Business Days before the Closing, the Company shall prepare and deliver to Buyer a statement setting forth its good faith estimate of Closing Working Capital (the "Estimated Closing Working Capital"), which statement shall contain an estimated balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Working Capital (the "Estimated Closing Working Capital Statement"), and a certificate of the President of Seller that the Estimated Closing Working Capital Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used by the Company in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Estimated Closing Working Capital Statement was being prepared and audited as of a fiscal year end.

(ii) The "Closing Adjustment" shall be an amount equal to the Estimated Closing Working Capital minus the Target Working Capital. For clarity, Schedule 1.4 attached hereto is an illustration of the calculation of the Closing Adjustment based on the balance sheet of the Company as of November 30, 2011. If the Closing Adjustment is a positive number, the Purchase Price shall be increased by the amount of the Closing Adjustment. If the Closing Adjustment is a negative number, the Purchase Price shall be reduced by the amount of the Closing Adjustment.

(c) Post-Closing Adjustment.

(i) Within sixty (60) days after the Closing Date, Buyer shall prepare and deliver to the Seller's Representative a statement setting forth its calculation of Closing Working Capital, which statement shall contain an audited balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital (the "Closing Working Capital Statement") and a certificate of the Chief Financial Officer of Buyer that the Closing Working Capital Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles,

policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used by the Company in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Working Capital Statement was being prepared and audited as of a fiscal year end.

(ii) The post-closing adjustment shall be an amount equal to the Closing Working Capital minus the Estimated Closing Working Capital (the "Post-Closing Adjustment"). If the Post-Closing Adjustment is a positive number, Buyer shall pay to Sellers an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, Sellers shall, subject to Section 1.4(d), pay to Buyer an amount equal to the Post-Closing Adjustment and Buyer may withdraw such amount from the Escrow Fund as the means of such payment; provided, however, that Buyer's right to withdraw such amount from the Escrow Fund shall not relieve Sellers from the obligation to pay such amounts on demand therefor.

(d) If Sellers notify Buyer in writing within thirty (30) days following receipt of the Closing Working Capital Statement that Sellers do not agree with such Closing Working Capital Statement, Buyer and Sellers shall use good faith efforts during the thirty (30) day period following the date of such written notice to resolve any differences they may have as to the Closing Working Capital Statement. Such written notice shall identify with reasonable specificity the calculations with which Sellers disagree. If Buyer and Sellers do not reach agreement during such thirty (30)-day period, their disagreements shall be promptly submitted to an independent auditor acceptable to Buyer and the Sellers, which shall conduct such additional review as is necessary to resolve the specific disagreements referred to it. The review of such independent auditor shall be restricted as to scope and shall address only those specific disagreements referred to it by Sellers and Buyer, and such other portions of the Closing Working Capital Statement as may be affected by any adjustments made by the independent auditor. The independent auditor shall complete its determination as promptly as practicable following its selection, and its determination shall be based on GAAP. Such determination shall be confirmed by such independent auditor in writing to Buyer and Sellers and shall constitute the Final Balance Sheet that shall be final and binding on Buyer and Sellers for purposes of this Section 1.4. The fees of expenses incurred by any independent auditor in connection with this Section 1.4 shall be shared equally by Buyer and Sellers.

**Section 2. Representations and Warranties of Sellers.** Each Seller, severally, and not jointly and severally, represents and warrants to Buyer with respect to the Interest listed next to the name of such Seller on Schedule 2.1, as follows, as of the date of this Agreement and as of the Closing Date:

2.1 Power and Authority. Such Seller has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of such Seller's obligations hereunder, and the consummation of the transactions contemplated hereby by such Seller, have been duly authorized by all requisite actions of such Seller. Such Seller has duly executed and delivered this Agreement. This Agreement constitutes the legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization,

moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity.

2.2 Title. Such Seller owns, beneficially and of record, its Interest, free and clear of all Liens. Upon the delivery of such Interest at the Closing as provided for in this Agreement, Buyer will acquire good and valid title to such Interest.

2.3 Company Interests. No Interest is evidenced by a certificate. The Interests have been duly authorized and are validly issued, fully paid and non-assessable, in accordance with the Company Operating Agreement, a true and complete copy of which is attached hereto as Schedule 2.3. Each Seller is the sole legal and beneficial owner of the Interest set forth in its respective name on Schedule 2.3 and has sole and exclusive right to exercise all privileges associated with such Interest. Except as provided in Article VI of the Company Operating Agreement, which provisions have been waived by each Seller and the Company pursuant to the waiver set forth in Schedule 2.3, there are no outstanding contractual or other rights or obligations to or of Sellers to repurchase, redeem or otherwise acquire any Interests or other equity interests of the Company.

2.4 No Conflicts, etc. The execution, delivery and performance of this Agreement by such Seller and the consummation by such Seller of the transactions contemplated hereby, do not and will not conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time or both), create in any other Person a right or claim of termination or amendment, or require modification, acceleration or cancellation of, or result in the creation of any Lien (or any obligation to create any Lien) under (i) any Law, applicable to such Seller or any of its respective properties or assets, or (ii) any Contract to which such Seller is a party or by which any of its respective properties or assets may be bound, other than, in the case of clause (ii), as would not be reasonably expected to materially and adversely affect such Seller's ability to perform under this Agreement.

2.5 Brokers, Finders. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of the such Seller or any of its Affiliates in such manner as to, and the transactions contemplated hereby and thereby will not otherwise, give rise to any valid claim against the Company or Buyer for any brokerage or finder's commission, fee or similar compensation.

2.6 Litigation. There is no Litigation pending or, to the Knowledge of such Seller, threatened against such Seller, relating to such Seller's Interest or such Seller's ability to consummate the transactions contemplated by this Agreement.

2.7 ERISA. Marquette represents that none of the transactions contemplated by this Agreement constitute a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

2.8 No other Representations and Warranties. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS Section 2, SUCH SELLER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN

EQUITY, IN RESPECT OF THE INTERESTS OR IN RESPECT OF THE COMPANY OR ANY OF ITS ASSETS, LIABILITIES OR OPERATIONS, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE EXPRESSLY DISCLAIMED.

**Section 3. Representations and Warranties of the Company.** The Company represents and warrants to Buyer as follows, as of the date of this Agreement and as of the Closing Date:

3.1 **Power and Authority.** The Company has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of the Company's obligations hereunder, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite actions of the Company. The Company has duly executed and delivered this Agreement. This Agreement constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity.

3.2 **Capitalization, etc.**

(a) **Company Interests.** The sole limited liability company interests of the company issued, authorized or outstanding are the Interests, and except for the Interests there are no other equity, membership, voting, economic or other interests or rights of any Person in the Company. The Interests have been duly authorized and are validly issued, fully paid and nonassessable, in accordance with the Company Operating Agreement, a true and complete copy of which is attached as Schedule 3.2(a).

(b) **No Equity Rights.** Except as provided in Article VI of the Company Operating Agreement, which provisions have been waived by all of the Sellers and the Company pursuant to the waiver set forth in Schedule 2.3, (i) there are no preemptive or similar rights on the part of any holders of any class of Interests or other equity interests of the company, (ii) except for this Agreement, no subscriptions, options, warrants, conversion or other rights, agreements, commitments, arrangements or understandings of any kind obligating Sellers, the Company or any other Person, contingently or otherwise, to issue or sell, or cause to be issued or sold, any Interests or any other equity interests of the Company, or any securities or other equity interests convertible into or exchangeable for any such Interests or other equity interest in the company are outstanding, and no authorization therefor has been given and (iii) there are no outstanding contractual or other rights or obligations to or of Sellers, the Company or any other Person to repurchase, redeem or otherwise acquire any outstanding Interests or other equity interests of the Company.

3.3 **No Subsidiaries.** The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

3.4 No Conflicts, etc. The execution, delivery and performance of this Agreement by the Company, and the consummation of the transactions contemplated hereby and thereby, do not and will not

(a) conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time or both), create in any other Person a right or claim of termination or amendment, or require modification, acceleration or cancellation of, or result in the creation of any Lien (or any obligation to create any Lien), on any of the properties or assets of the Company, under, (i) any Law applicable to the Company or any of its respective properties or assets, (ii) any provision of any of the Organizational Documents of the Company or (iii) any Material Contract to which the Company is a party or by which any of its properties or assets may be bound, other than, in the case of (i) or (iii) above, the violation of which would not reasonably be expected to result in a Material Adverse Effect, and

(b) except as set forth on Schedule 3.4, require the Consent, notice or other action by any Person if the failure to give such notice or take such other action (i) would reasonably be expected to impair the conduct of the Company's business or the use or operation of the property or (ii) otherwise would reasonably be expected to result in a Material Adverse Effect.

### 3.5 Status.

(a) Organization. The Company is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has full limited liability company power and authority to conduct its business and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated, except where failure to do so would not reasonably be expected to result in a Material Adverse Effect on the financial condition of the Company.

(b) Qualification. The Company is and will continue to be duly qualified and licensed to do business in each other state in which the ownership of its property or the nature of its business makes such qualification necessary, except where the failure to so qualify would not reasonably be expected to result in a Material Adverse Effect. Schedule 3.5(b) sets forth each jurisdiction in which the Company is licensed or qualified to do business.

(c) Organizational Documents. The Company has made available to Buyer complete and correct copies of the Organizational Documents of the Company, as amended, modified or waived through and in effect on the date hereof. Each of the Organizational Documents is in full force and effect. The Company is not in violation of any of the provisions of its Organizational Documents, the violation of which would reasonably be expected to result in a Material Adverse Effect.

### 3.6 Tax Matters.

(a) Except as described in Schedule 3.6(a), all Tax Returns of the Company that were required to be filed have been duly and timely filed and when filed all such Tax Returns were correct and complete in all material respects and set forth all material disclosures required by applicable Law. All Taxes owed by or with respect to the Company (whether or not

shown on any Tax Return) that are due and payable prior to or as of the Closing Date by the Company have been paid or provision for payment has been made therefor. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return. The Company has not been informed by any jurisdiction that the jurisdiction believes the Company is or may be required to file any Tax Return that was not filed. There are no Liens (or other similar encumbrances) with respect to Taxes (other than Taxes not yet due and payable) upon any asset of the Company.

(b) There is no action, suit, investigation, audit, examination, claim or assessment currently ongoing, pending or, to the Knowledge of the Company, proposed or threatened by any taxing authority with respect to Taxes of the Company.

(c) No Tax Returns of the Company are currently the subject of audit or examination, nor has the Company been notified in writing of any request for an audit or examination.

(d) There is no waiver or agreement in force for the extension of time for assessment or payment of any Taxes and there is no deficiency proposed in writing against the Company.

(e) The Company has been treated as a partnership for United States federal income Tax purposes for all taxable periods from its formation through and including the Closing Date. The Company has not filed an entity classification election to treat the Company as an association taxable as a corporation nor has it filed any return or report with any taxing authority that could cause the Company to be characterized or treated as an entity other than a partnership for United States federal income Tax purposes.

(f) No unresolved claim has been made against the Company by a Taxing authority in a jurisdiction where the Company has not paid Taxes or filed Tax Returns that are the subject of such claim asserting that the Company is or may be subject to Taxes assessed by such jurisdiction.

(g) The unpaid Taxes of the Company for periods through the date of the Reference Balance Sheet do not exceed the accruals and reserves for Taxes (excluding accruals and reserves for deferred Taxes) set forth on the Reference Balance Sheet and all unpaid Taxes of the Company for all Tax periods or portions thereof commencing after the date of Reference Balance Sheet Date in the Ordinary Course of Business and are of a type and amount commensurate with Taxes attributable to prior similar periods.

(h) The Company has no actual or potential liability for any Taxes of any Person other than the Company as a transferee or successor, pursuant to any contractual obligation, or otherwise, and the Company is not a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar agreement.

(i) Except as described in Schedule 3.6(i), all Taxes that the Company was required by Law to withhold or collect have been duly withheld or collected and, to the extent required, have been properly paid to the appropriate Governmental Authority. All individuals who have performed services for the Company while classified as independent contractors have,

in all material respects, to the Company's Knowledge, satisfied the requirements of Law to be so classified, and the Company has, to its Knowledge, fully and accurately reported their compensation on IRS Forms 1099 or other applicable forms for independent contractors when required to do so.

(j) The Company has delivered to Buyer (i) complete and correct copies of all Tax Returns of the Company relating to Taxes for all taxable periods for which the applicable statute of limitations has not yet expired and (ii) complete and correct copies of all private letter rulings, revenue agent reports, information document requests, notices of proposed deficiencies, deficiency notices, protests, petitions, closing agreements, settlement agreements, pending ruling requests and any similar documents submitted by, received by, or agreed to by or on behalf of the Company relating to Taxes for all taxable periods for which the statute of limitations has not yet expired.

(k) Schedule 3.6(k) sets forth all state and local Tax Returns required to be filed for the year ending December 31, 2011 or on the Closing Date, based on the Company's operations prior to the Closing Date.

(l) The Company, to the best of its Knowledge, has not engaged in any "reportable transaction" (as defined in Treasury Regulation Section 1.6011-4) and has not made any disclosure under Treasury Regulation Section 1.6011-4.

(m) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period ending on or after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) intercompany transactions occurring on or prior to the Closing Date that are not entered into in the Ordinary Course of Business or which are not consistent with the past practices of the Company; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; or (iv) prepaid amount received on or prior to the Closing Date other than prepayments received in the Ordinary Course of Business or which are consistent with the past practices of the Company.

(n) All assignments of railroad track by the Company pursuant to Code Section 45G are valid and such assignments have involved only railroad track located with the United States that is owned or leased by the Company as of the close of the relevant Tax year and that is owned or leased by a Class II Railroad or Class III Railroad, as such terms are defined by the STB. The Company has not engaged in any transaction in which it has purported to sell, transfer or otherwise assign tax credits available under Code Section 45G for Tax years subsequent to 2011.

### 3.7 Compliance with Laws and Instruments; Consents.

(a) Compliance. The Company is not in conflict with or in violation or breach of or default under (and there exists no event that, with notice or passage of time or both, would constitute a conflict, violation, breach or default with, of or under) (i) to the Knowledge of the Company, any Law applicable to it or any of its properties, assets, operations or business other than violations that may exist which reasonably would not be expected to be Material in amount

or, if adversely decided, would reasonably be expected to result in a Material Adverse Effect, (ii) any provision of its Organizational Documents, (iii) to the Knowledge of the Company, any Material Contract, or any other agreement or instrument to which it is party or by which it or any of its properties or assets is bound or affected other than a breach or default that may exist which reasonably would not be expected to be Material in amount or result in a Material Adverse Effect, and (iv) the Company has not received notice of any claim alleging any such conflict, violation, breach or default.

(b) Consents. No Governmental Approval or other Consent is required to be obtained or made by the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

3.8 Financial Statements. Schedule 3.8 sets forth (a) the audited balance sheets of the Company as at December 31, 2008, December 31, 2009 and December 31, 2010 (the audited balance sheet as at December 31, 2010 referred to as the "Balance Sheet") and the related audited statements of income and cash flow for fiscal year ended December 31 2010; and (b) the unaudited balance sheet of the Company as of November 30, 2011 (the "Reference Balance Sheet") and the unaudited related statements of income and cash flow and notes thereto for the eleven (11) month period ended November 30, 2011 (collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Reference Balance Sheet, to normal and recurring year-end adjustments (the effect of which are not Material individually or in the aggregate) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are prepared from the books and records of the Company, and present fairly in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated.

3.9 Absence of Undisclosed Liabilities and Debt. The Company has no Liabilities or Debt, including guarantees, indemnities or otherwise of the Company with respect to the liabilities of any other Person, due or then accrued or to become due or contingent or potential liabilities relating to the activities of the Company or the conduct of its business at any time, prior to the Closing, regardless of whether claims in respect thereof have been asserted, other than Liabilities or Debt (a) disclosed on Schedule 3.9 of the Disclosure Schedules; (b) as set forth on the Balance Sheet, and (c) Liabilities for trade payables incurred in the Ordinary Course of Business since the date of the Balance Sheet and which are not, individually or in the aggregate, Material in amount.

3.10 Conduct in the Ordinary Course; Absence of Changes. Since September 30, 2011, except as disclosed on Schedule 3.10 of the Disclosure Schedules, the Company has conducted the Business of the Company in the Ordinary Course of Business, and, except as disclosed on Schedule 3.10 of the Disclosure Schedules, since November 30, 2011, the Company has not:

(a) permitted or allowed any of the material assets of the Company to be subjected to any Lien, other than Liens that will be released at or prior to the Closing;

(b) discharged or otherwise obtained the release of any Lien or paid or otherwise discharged any Liability, other than current Liabilities in the Ordinary Course of Business;

(c) amended, terminated, cancelled or compromised any claim of the Company or waived any other rights of material value to the Company;

(d) sold, transferred, leased, subleased, licensed or otherwise disposed of any of the assets of the Company, other than the sale of Inventory in the Ordinary Course of Business and sales of assets which would reasonably be expected not to be Material in amount or, whether or not Material in amount, would reasonably be expected to result in a Material Adverse Effect;

(e) taken any of the following actions: (i) entered into, adopted or amended any Employee Plan (except to comply with requirements of applicable Law or to reflect the transactions contemplated by this Agreement); (ii) made any grant of any severance or termination pay to any director, officer, employee or individual providing services to the Company; (iii) entered into any employment, deferred compensation, change in control or other similar agreement (or any amendment to any such existing agreement) with any director, officer, employee or individual providing services to the Company; (iv) increased or promised to increase any benefits payable under any existing severance or termination pay policies or employment agreements; or (v) materially increased or promised to increase, directly or indirectly, any compensation (or rate thereof), bonus or other benefits paid or payable to any agent, director, officer, employee of the Company or any other Person providing services to the Company.

(f) made any loan, advance or capital contribution to, or investment in, or guaranteed any Debt of or otherwise incurred any Debt on behalf of, any Person;

(g) instituted or settled any Litigation, or any claims, including without limitation any Litigation or claims with respect to Taxes or Tax Returns;

(h) made any single capital expenditure or commitment in excess of \_\_\_\_\_, or aggregate capital expenditures or commitments in excess of \_\_\_\_\_;

(i) made any material change in any method of accounting or account practice of the Company except as required by GAAP or as disclosed in the notes to the Financial Statements;

(j) transferred, assigned or granted any license or sublicense of any Material rights under or with respect to any Intellectual Property;

(k) entered into any joint venture, partnership or similar arrangement;

(l) entered into any agreement, arrangement or transaction with any of its directors, officers, employees, agents or members, or any Affiliates thereof;

(m) suffered any casualty loss or damage with respect to any of the assets of the Company (whether or not covered by insurance) which in the aggregate has a replacement cost of more than \_\_\_\_\_, whether or not such losses or damage shall have been covered by insurance;

(n) amended, modified or consented to the termination of any Material Contract or the Company's rights thereunder;

(o) amended or restated its Organizational Documents;

(p) changed the amount of the Company's authorized or issued Interests; granted any option or right to purchase Interests of the Company or issued any security convertible into such Interests; or granted any registration rights, or disclosed or paid any dividend, in respect of any Interests of the Company;

(q) instituted or adopted any material changes to its accounting, financial reporting or tax reporting policies and procedures; or

(r) made any commitment or agreement to do any of the foregoing.

### 3.11 Contracts.

(a) Schedule 3.11(a) contains a list of Material Contracts, including a list of all Consents required under such Material Contracts as a result of the transactions contemplated by this Agreement, to the extent currently in effect, and, with respect to written Material Contracts constituting agreements with customers of the Company, copies of which have not been made available to Buyer due to restrictions of confidentiality, a description of the parties and the substantive terms and conditions that may be disclosed without violation of any restrictions of confidentiality, including traffic data relating to such Material Contracts showing commodities, origins, destinations, rates payable to the Company and term, which description is complete and accurate in all material respects.

(b) The Company has made available to the Buyer true, correct and complete copies of all Material Contracts that are in writing, and Schedule 3.11(b) of the Disclosure Schedules contains a reasonable summary of all Material Contracts that are not in writing.

(c) All of the Material Contracts are in full force and effect and are valid and binding obligations of the Company, enforceable in all material respects in accordance with their respective terms, subject only to bankruptcy, insolvency or similar laws affecting the rights of creditors generally and to general equitable principles. The Company is in compliance in all material respects with the applicable terms of each such Material Contract. All Material Contracts relating to the Business as presently conducted are held in the name of the Company. The Company has not received any written notice of default under any of the Material Contracts, and, to the Knowledge of the Company, no event has occurred which, with the passage of time or the giving of notice or both, in any material respect would constitute a default by the Company thereunder. To the Knowledge of the Company, none of the other parties to any of the Material Contracts is in material default thereunder, nor has an event occurred which, with the passage of time or the giving of notice or both would constitute a material default by such other party

thereunder. The Company has not received any notice of the pending or threatened cancellation, revocation or termination of any of the Material Contracts.

3.12 Governmental Permits. Schedule 3.12 contains a complete and accurate list of all Governmental Permits that are required for the operation by the Company of the Business as operated by the Company through the Closing, and the Company holds all such Governmental Permits, other than those the failure of which to possess would not have a Material Adverse Effect. The Company (a) is in compliance with all conditions and requirements imposed by such Governmental Permits, other than non-compliance which would not cause a Material Adverse Effect; and (b) has neither received any notice of, nor has any Knowledge of any threats of, cancellation or termination of any such Governmental Permit. Except as set forth on Schedule 3.12 of the Disclosure Schedules, (a) each of the Governmental Permits is valid and in full force and effect; and (b) except as would not have a Material Adverse Effect, the Company owns or has the right to use the Governmental Permits in accordance with the terms thereof.

3.13 Litigation. Except as set forth on Schedule 3.13 of the Disclosure Schedules, (a) there is no Litigation pending or, to the Knowledge of the Company, threatened by or before any Court or Governmental Authority (i) involving or otherwise affecting the Company or the Business or any of the property, assets or rights owned or used by the Company or (ii) that challenges or calls into question the validity of this Agreement or that may have the effect of preventing or delaying any action taken or to be taken pursuant hereto or thereto; (b) there is no action by the Company pending or threatened against any third party; and (c) there is no outstanding Order against the Company.

3.14 Insurance. The Company has delivered to the Buyer true and complete copies of all insurance policies and fidelity bonds covering in all material respects the assets, business, equipment, properties and operations of the Company or otherwise relating to the Business, a list of which (by type, carrier, policy number, limits, premium and expiration date) is set forth on Schedule 3.14 of the Disclosure Schedules, and which list includes any pending claim thereunder. The Company has paid all premiums due, and has otherwise performed its obligations under each such policy and bond and all such insurance policies and bonds are in full force and effect and will remain in full force and effect following the Closing. The Company has not received or given notice of cancellation or non-renewal with respect to any such insurance policy, fidelity bond or binder. The Company holds the type and amount of insurance required by the applicable Material Contracts.

3.15 Receivables. Except as set forth on Schedule 3.15 of the Disclosure Schedules, all Receivables of the Company arose from sales actually made or services actually performed in the Ordinary Course of Business to Persons not affiliated with the Company and, except as reserved against on the Reference Balance Sheet, constitute valid claims of the Company not subject to valid claims of set-off other than normal cash discounts accrued in the Ordinary Course of Business. Each of the Receivables reflected on the Reference Balance Sheet (subject to the reserve for bad debts, if any, reflected on the Reference Balance Sheet) is owned by Company free and clear of any Liens.

3.16 Real Property.

(a) Except as disclosed on Schedule 3.16(a), the Company does not own, directly or indirectly, any real property.

(b) Schedule 3.16(b) of the Disclosure Schedules lists (i) each parcel of Leased Real Property; and (ii) the lease applicable to each parcel of Leased Real Property.

(c) Except as set forth on Schedule 3.16(c) of the Disclosure Schedules, there is no Material violation of any municipal, state or federal Law (including, without limitation, any environmental, building, planning or zoning Law) relating to any of the Leased Real Property other than violations that may exist which reasonably would not be expected to be Material in amount or, if adversely decided, would not reasonably be expected to result in a Material Adverse Effect.

(d) Except as set forth on Schedule 3.16(d) of the Disclosure Schedules, the Company has not subleased any parcel or any portion of any parcel of Leased Real Property to any other Person, nor has the Company assigned its interest under any lease or sublease to any third party.

(e) The Company has delivered to the Buyer correct and complete copies of all material leases and subleases listed on Schedule 3.16(b) of the Disclosure Schedules and any and all ancillary documents pertaining thereto (including, but not limited to, all amendments, consents for alterations and documents recording variations and evidence of commencement dates and expiration dates) (the "Leases"). With respect to each such Lease:

Except as set forth on Schedule 3.16(e): (i) such Lease is legal, valid, binding, enforceable and in full force and effect and represents the entire agreement of the Company; (ii) such Lease will not cease to be legal, valid, binding, enforceable and in full force and effect on terms identical to those currently in effect as a result of the consummation of the transactions contemplated by this Agreement, nor will the consummation of the transactions contemplated by this Agreement constitute a breach or default under such Lease or otherwise give the landlord a right to terminate such Lease; (iii) with respect to each such Lease (A) the Company has not received any written notice of cancellation or termination under such Lease and no lessor has any right of termination or cancellation under such Lease except in connection with the default of the Company thereunder or the expiration of the Lease, (B) the Company has not received any notice of a breach or default under such Lease, which breach or default has not been cured and (C) the Company has not granted to any other Person any rights, adverse or otherwise, under such Lease; (iv) neither the Company, nor, to the Knowledge of the Company, any other party to such Lease, is in breach or default in any material respect, and, to the Knowledge of the Company, no event has occurred that, with notice or lapse of time would constitute such a material breach or default or permit termination, modification or acceleration under such Lease; and (v) the rental payments set forth in each Lease is the actual rental being paid, and there are no separate agreements or understandings with respect to the same.

(f) There are no present, pending or, to the Knowledge of the Company, threatened special assessments, tax takings, condemnation proceedings or eminent domain proceedings against any of the Leased Real Property.

### 3.17 Personal Property.

(a) Schedule 3.17 of the Disclosure Schedules sets forth a list or description of all machinery, equipment, tools, supplies, furniture, fixtures, vehicles, rolling stock and other tangible personal property used in the Business and owned by or leased to the Company (the "Tangible Personal Property"), and the location thereof. Except as shown on Schedule 3.17 of the Disclosure Schedules, the Company has good and marketable title, free and clear of all Liens, to all Tangible Personal Property owned by the Company.

(b) The Company has delivered to the Buyer correct and complete copies of all leases for Tangible Personal Property and any and all material ancillary documents pertaining thereto (including, but not limited to, all amendments, consents and evidence of commencement dates and expiration dates). With respect to each such lease:

Except as set forth on Schedule 3.17(b): (i) such lease is the legal, valid and binding obligation of the Company enforceable against the Company in all material respects in accordance with its terms and in full force and effect and represents the entire agreement between the respective lessor and the Company lessee with respect to such property; (ii) such lease will not cease to be legal, valid, binding, enforceable and in full force and effect on terms identical to those currently in effect as a result of the consummation of the transactions contemplated by this Agreement, nor will the consummation of the transactions contemplated by this Agreement constitute a breach or default under such lease or otherwise give the lessor a right to terminate such lease; (iii) with respect to each such lease, (A) the Company has not received any written notice of cancellation or termination under such lease and no lessor has any right of termination or cancellation under such lease or sublease except in connection with the default of the Company thereunder or the expiration thereof, (B) the Company has not received any written notice of a breach or default in any material respect under such lease, which breach or default has not been cured or waived and (C) the Company has not granted to any other Person any rights, adverse or otherwise, under such lease; and (iv) neither the Company, nor, to the Knowledge of the Company, any other party to such lease, is in breach or default in any material respect, and no event has occurred that, with notice or lapse of time would constitute such a material breach or default or permit termination, modification or acceleration under, such lease, other than in the case of (ii) above, the breach or default or right to terminate of such lease would not reasonably be expected to be Material or to result in a Material Adverse Effect.

3.18 Condition and Sufficiency of Assets. Except as set forth in Schedule 3.18, the Leased Real Property and the Tangible Personal Property are in good operating condition and repair, reasonable wear and tear excepted, comply with applicable Law in all material respects and are adequate for the uses to which they are being put by the Company. The Leased Real Property and Tangible Personal Property are reasonably sufficient for the continued conduct in all material respects of the Company's Business after the Closing in substantially the same manner as conducted by the Company prior to the Closing and constitute all of the material

property and assets reasonably necessary to conduct the Business of the Company as currently conducted.

### 3.19 Employment Matters; Labor Relations.

(a) Schedule 3.19(a) of the Disclosure Schedules lists all written employment, consulting, severance, termination, indemnification or other similar agreements of any nature between the Company and any current or former member, officer, director, senior employee or consultant of or to the Company. Except as set forth on Schedule 3.19(a) of the Disclosure Schedules, no individual will accrue or receive additional benefits, service or accelerated rights to payments under any Employee Plan or any of the agreements set forth on Schedule 3.19(a) of the Disclosure Schedules, including the right to receive any parachute payment, as defined in Section 280G of the Code, or become entitled to severance, termination allowance or similar payments as a result of the transactions contemplated by this Agreement and the other Documents.

(b) Except as set forth on Schedule 3.19(b) of the Disclosure Schedules: (i) the Company is not a party to or bound by any collective bargaining agreement or other labor union contract applicable to any persons employed by the Company, and to the Knowledge of the Company currently there are no organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit which could affect the Company; (ii) there are no pending or, to the Knowledge of the Company, threatened charges (by employees, their representatives or governmental authorities) of unfair labor practices or of employment discrimination or of any other wrongful action with respect to any aspect of employment of any person employed or formerly employed by the Company; (iii) the Company is currently in material compliance with all applicable Laws relating to the employment of labor, including those related to wages, hours, and the payment and withholding of taxes and other sums as required by the appropriate Governmental Authority and has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all material amounts required to be withheld from employees of the Company and to its Knowledge, is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing; (iv) the Company has paid in full to all their respective employees or adequately accrued for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees; (v) there is no claim with respect to payment of wages, salary or overtime pay that has been asserted or is now pending or, to the Knowledge of the Company, threatened before any Governmental Authority with respect to any Persons currently or formerly employed by the Company; (vi) the Company is not a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to employees or employment practices; (vii) there is no charge or proceeding with respect to a violation of any occupational safety or health standards that has been asserted or is now pending or, to the Knowledge of the Company, threatened with respect to the Company; (viii) there is no charge of discrimination in employment or employment practices, for any reason, including, without limitation, age, gender, race, religion or other legally protected category, which has been asserted or is now pending or, to the Knowledge of the Company, threatened before the United States Equal Employment Opportunity Commission, or any other Governmental Authority in any jurisdiction in which the Company has employed or currently employs any Person; and (ix) none of the Company's employment policies or practices is

currently being audited or, to the Knowledge of the Company, investigated by any Governmental Authority.

### 3.20 Employee Plans.

(a) Schedule 3.20(a) of the Disclosure Schedules contains a true and complete list of all Employee Plans. Except as otherwise disclosed on Schedule 3.20(a), the Company has provided to the Buyer correct and complete copies (where applicable) of the following: (i) all written plan documents, summary plan descriptions, summaries of material modifications, amendments, and resolutions related to the Employee Plans; (ii) the most recent determination letters (or opinion letters) received from the IRS with respect to any Employee Plan; (iii) the three most recent years of Form 5500 Annual Reports and summary annual reports, and non-discriminatory testing documentation, if applicable; (iv) the most recent audited financial statement and actuarial valuation with respect to any Employee Plan and; (v) all related agreements, insurance contracts and other agreements which implement each such Employee Plan. The Company has complied in all material respects with all applicable Laws (including notice and filing requirements thereunder) relating to such Employee Plans, including without limitation, ERISA and applicable Code provisions.

(b) Except as described on Schedule 3.20(b) of the Disclosure Schedules: (i) there has been no "prohibited transaction," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, with respect to any Employee Plan and none of the transactions contemplated by this Agreement constitute such a prohibited transaction; (ii) there are no claims pending (other than claims for benefits in the Ordinary Course of Business) or, to the Knowledge of the Company, threatened against any Employee Plan or against the assets of any Employee Plan, nor are there any current or, to the Knowledge of the Company, threatened Liens on the assets of any Employee Plan; (iii) all Employee Plans conform to, and in their operation and administration are in all material respects in compliance with, the terms thereof and requirements prescribed by any and all applicable Laws (including ERISA and the Code), currently in effect with respect thereto (including without limitation all applicable requirements for notification, reporting and disclosure to participants or the United States Department of Labor, IRS or Secretary of the Treasury); (iv) the Company and ERISA Affiliates have performed all material obligations required to be performed by them under, are not in default under or violation of, and the Company has no Knowledge of any default or violation by any other party with respect to, any of the Employee Plans; (v) each Employee Plan intended to qualify under Section 401(a) of the Code and each corresponding trust exempt under Section 501 of the Code has received or is the subject of a favorable determination or opinion letter from the IRS, and, to the Knowledge of the Company, nothing has occurred which may be expected to cause the loss of such qualification or exemption; (vi) all contributions required to be made to any Employee Plan pursuant to Section 412 of the Code or otherwise, the terms of the Employee Plan or any collective bargaining agreement, have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Employee Plan for the current plan year; (vii) the transaction contemplated by this Agreement will not, directly or indirectly, result in an increase of benefits, and except for Employee Plans identified on Schedule 3.20(b) as being terminated as a result of the contemplated transaction, acceleration of vesting or acceleration of timing for payment of any benefit to any participant in or beneficiary of, any Employee Plan; and (viii) neither the Company nor any ERISA Affiliate has ever made a complete or partial

withdrawal from a Multiemployer Plan (as such term is defined in Section 3(37) of ERISA) resulting in “withdrawal liability” (as such term is defined in Section 4201 of ERISA), without regard to any subsequent waiver or reduction under Section 4207 or 4208 of ERISA.

(c) No Employee Plan is an “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) subject to Title IV of ERISA, and neither the Company nor ERISA Affiliate has ever partially or fully withdrawn from any such plan. No Employee Plan is a Multiemployer Plan or “single-employer plan under multiple controlled groups” as described in Section 4063 of ERISA, and neither the Company nor ERISA Affiliate has ever contributed to or had an obligation to contribute, or incurred any liability in respect of a contribution, to any Multiemployer Plan.

(d) Each Employee Plan that is a “group health plan” (within the meaning of Section 5000(b)(1) of the Code) has been operated in material compliance with all applicable Laws, and with the group health plan continuation coverage requirements of Section 4980B of the Code and Sections 601 through 608 of ERISA (“COBRA Coverage”), Section 4980D of the Code and Sections 701 through 707 of ERISA, Title XXII of the Public Health Service Act and the provisions of the Social Security Act, to the extent such requirements are applicable. No Employee Plan or agreement exists which obligates the Company, any Subsidiary of the Company or any ERISA Affiliate to provide health care coverage, medical, surgical, hospitalization, death or similar benefits (whether or not insured) to any present or former employee, director, agent or consultant of the Company or any ERISA Affiliate following such employee’s, director’s, agent’s or consultant’s termination of employment with the Company, any Subsidiary of the Company or any ERISA Affiliate, including retiree medical, health or life benefits, other than COBRA Coverage.

(e) Except as set forth on Schedule 3.20(e) of the Disclosure Schedules, no Employee Plan, excluding any short-term disability, non-qualified deferred compensation or health flexible spending account plan or program, is self-funded, self-insured or funded through the general assets of the Company or an ERISA Affiliate. Except as set forth on Schedule 3.20(e) of the Disclosure Schedules, no Employee Plan which is an employee welfare benefit plan under Section 3(1) of ERISA is funded by a trust or is subject to Section 419 or 419A of the Code.

(f) With respect to each Employee Plan, there are no restrictions on the ability of the sponsor of each Employee Plan to amend or terminate any Employee Plan, the Company has expressly reserved in itself the right to amend, modify or terminate any such Employee Plan, or any portion of it, and has made no representations (whether orally or in writing) which would conflict with or contradict such reservation or right.

(g) Each Employee Plan which is a “nonqualified deferred compensation plan” within the meaning of Section 409A(d)(1) of the Code satisfies the requirements of Section 409A of the Code and the Treasury Regulations and other guidance thereunder and has been operated in accordance with such requirements.

3.21 Intellectual Property. The Company has the right to use the Marquette logo currently in use by the Company on the terms and conditions set forth in the Trademark

License Agreement between Transportation Solutions, Inc. and the Company dated October 28, 2005 and will have the right to use such logo from and after the Closing Date in accordance with the Trademark License Agreement as amended pursuant to the Amendment to Trademark License Agreement dated as of January 27, 2012.

3.22 Environmental Matters. Except as disclosed in Schedule 3.22 of the Disclosure Schedules:

(a) the Company and the Leased Real Property are, and have been for the past five (5) years, in compliance in all material respects with Environmental Laws and the Company has obtained and is in compliance with all material Environmental Permits required for its operation under Environmental Laws (and all such Environmental Permits are in full force and effect);

(b) the Company has not, and has no Knowledge of any other person who has, since the inception of operations by the Company, caused any Release, threatened Release or disposal of any Hazardous Substance at, on or under the Leased Real Property and the Leased Real Property is not materially adversely affected by any Release, threatened Release or disposal of a Hazardous Substance;

(c) the Company has not, except in the Ordinary Course of Business and in compliance with Environmental Laws, used, stored, treated, disposed, transported or handled any Hazardous Substance and has not processed, distributed, treated, disposed, emitted, discharged or released into the environment any Hazardous Substance in violation of Environmental Laws;

(d) to the Knowledge of the Company, the Leased Real Property does not contain and has not contained any:

(i) underground storage tank;

(ii) material amounts of asbestos containing building material;

(iii) any landfills, waste disposal areas or dumps;

(iv) hazardous waste management facility as defined pursuant to the Resource Conservation and Recovery Act or any comparable state law;

(v) site on or nominated for the National Priority List promulgated pursuant to the Comprehensive Environmental Response Compensation and Liability Act or any state priority list promulgated pursuant to any comparable state law; or

(vi) any condition which may pose a Material risk to the environment or health or safety of persons.

(e) the Company has not received any notice and the Company has no Knowledge of any actual or potential violation, claim, demand, litigation, proceeding, information request or governmental investigation (whether pending or threatened) arising from Environmental Laws applicable to the Company, the Leased Real Property, operations by the

Company at the Leased Real Property since the inception of operations of the Company or Hazardous Substances that are or were present on, in, under or in the vicinity of the Leased Real Property;

(f) to the Knowledge of the Company, there are no conditions, circumstances, activities, practices, incidents, actions, or plans that could materially interfere with or prevent the Company's compliance or continued compliance with Environmental Laws or which may give rise to any Material legal liability (whether statutory or common law) or which may otherwise form the basis of any Material claim, action, demand, suit, proceeding, hearing, notice of violation, study or investigation based on or related to the generation, manufacture, processing, distribution, use, presence, treatment, storage, disposal, transport, handling, Release or threatened Release of any Hazardous Substance at or from the Leased Real Property in connection with the Company's operations;

(g) to the Knowledge of the Company, the Company is not a potentially responsible party with respect to any Release or threatened Release of Hazardous Substances at the Leased Real Property or any other property;

(h) to the Knowledge of the Company, the Leased Real Property is not subject to any imminent restriction on the ownership, occupancy, use or transferability of such facilities in connection with any Environmental Law or the Release, threatened Release or disposal of a Hazardous Substance; and

(i) the Company has furnished to Buyer all material environmental reports, investigations, studies, data, audits, permits, licenses and registrations in its possession that relate to the Company, its operations, facilities or the Leased Real Property.

3.23 Brokers. The Company has not employed any financial advisor (although the Employee Stock Ownership Plan that owns Marquette Rail Corp., one of the Sellers, has employed a financial advisor), agent, broker or finder, and the Company has not incurred any broker's, finder's, investment banking or similar fees, commissions or expenses in connection with the transactions contemplated by this Agreement.

3.24 Bank Accounts; Credit Cards; Corporate Accounts; Powers of Attorney. Schedule 3.24 of the Disclosure Schedules sets forth a true and complete list of (a) all bank accounts and safe deposit boxes of the Company and all Persons who are signatories thereunder or who have access thereto; (b) credit card issuers with which the Company has an account and the names of all Persons authorized to use such accounts or who have access thereto; (c) cellular telephone, phone card or other corporate accounts with which the Company has an account and the names of all Persons authorized to use such accounts or who have access thereto; and (d) the names of all Persons holding general or special powers of attorney from the Company and a summary of the terms thereof.

3.25 Transactions with Related Parties. Except as set forth on Schedule 3.25 and except for advancements or reimbursements of reasonable and necessary business expenses and other transactions between the Company and its directors, officers, members or Affiliates in the Ordinary Course of Business, no director, officer or Affiliate of the Company, none of the

Sellers and no immediate family member or Affiliate thereof: (a) has borrowed money from or loaned money to the Company that has not been repaid; (b) to the Knowledge of the Company, has any Material unresolved contractual, tort or other claim, express or implied, against the Company; (c) has or has had, since October 1, 2007, any right or interest in or to any property, rights or assets owned or used by the Company; or (d) is party to any contract, transaction or other arrangement with the Company or its Affiliates, other than the Organizational Documents of the Company or any employment agreements set forth on Schedule 3.25.

3.26 No Other Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3, THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY IN RESPECT OF THE COMPANY OR ANY OF ITS ASSETS, LIABILITIES OR OPERATIONS INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE EXPRESSLY DISCLAIMED.

**Section 4. Representations and Warranties of Buyer.** Buyer represents and warrants to Sellers as follows, as of the date hereof and as of the Closing Date:

4.1 Status; Authorization, etc. Buyer is a Delaware corporation. Buyer has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite action of Buyer. Buyer has duly executed and delivered this Agreement. This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

4.2 No Conflicts, etc. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time, or both), create in any other Person a right or claim of termination or amendment, or require modification, acceleration or cancellation of, or result in or require the creation of any Lien (or any obligation to create any Lien) on any of the properties or assets of Buyer under (a) any Law applicable to Buyer or any of its properties or assets, (b) any provision of any of the Organizational Documents of Buyer, or (c) any Material Contract to which Buyer is a party or by which its properties or assets may be bound.

4.3 Brokers. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Buyer or any of its Affiliates in such manner as to, and the transactions contemplated hereby and thereby will not otherwise, give rise to any valid claim against Sellers for any brokerage or finder's commission, fee or similar compensation.

4.4 Purchase for Investment. Buyer is an "accredited investor" (as defined in Regulation D under the Securities Act) and is purchasing the Interests solely for investment, with no present intention to resell the Interests. Buyer hereby acknowledges that the Interests have

not been registered pursuant to the Securities Act and may not be transferred in the absence of such registration or an exemption therefrom under such Act. Buyer shall not make any disposition of the Interests in violation of the Securities Act or any applicable provision of State or Federal law.

4.5 Litigation. There is no writ, injunction, decree order, judgment outstanding, nor any Litigation pending or involving or threatened against Buyer or any Affiliate of Buyer that questions the validity of this Agreement or any action taken or to be taken by Buyer or its Affiliates to consummate the transactions contemplated by this Agreement.

4.6 Governmental Approvals. Except as disclosed in Schedule 4.6, no consent, approval or action of, filing with or notice to any federal, state or local governmental or regulatory authority on the part of Buyer is required in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

4.7 Financing; Solvency. Buyer has sufficient cash and available credit facilities, and has provided Sellers with evidence thereof, to pay the Purchase Price and to make all other payments of fees and expenses in connection with the transactions contemplated by this Agreement. After giving effect to the transactions contemplated by this Agreement, Buyer will not (a) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair market value of its assets or because the fair saleable value of its assets is less than the amount required to pay its probable liabilities on its existing debts as they mature; (b) have unreasonably small capital with which to engage in its business or (c) have incurred debts beyond its ability to pay as they become due.

4.8 No other Representations and Warranties. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS SECTION 4, BUYER MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE BUYER OR ANY OF ITS ASSETS, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE EXPRESSLY DISCLAIMED.

**Section 5. Covenants of Sellers and the Company.**

5.1 Conduct of Business. On and after the date hereof to the Closing Date, except in the Ordinary Course of Business or as expressly required or permitted by this Agreement or as otherwise expressly consented to by Buyer in writing, the Company shall, and Sellers shall cause the Company to:

(a) except as provided or permitted in this Agreement, and except for cash distributions by the Company to Sellers that are required or permitted by the Company Operating Agreement, including without limitation Section 4.14 of the Company Operating Agreement, or not inconsistent with this Agreement and for which Sellers have given Buyer notice prior to the payment of such distributions and not later than 7 days prior to the Closing Date, not declare dividends or distributions on, or redeem, repurchase, adjust, split, combine or reclassify any equity interests in the Company, incur any Debt or make any cash payments other than in the Ordinary Course of Business;

(b) not transfer, assign, mortgage, pledge, hypothecate, grant any security interest in, or otherwise subject to any other Lien, any of the assets of the Company;

(c) perform the obligations of the Company provided for under the Material Contracts;

(d) not enter into or assume any Material Contract or enter into or permit any amendment, supplement, waiver or other modification in respect thereof;

(e) maintain the books of account and records of the Company in the usual, regular and ordinary manner consistent with past policies;

(f) comply in all material respects with all Laws applicable to the Company or any of its properties, assets or business;

(g) not compromise, settle, grant any waiver or release relating to or otherwise adjust any Litigation affecting the Company;

(h) not cause or permit any amendment, supplement, or except as set forth in Schedule 3.2(b), waiver or modification to or of any of the Organizational Documents of the Company;

(i) use commercially reasonable efforts to maintain the good standing of the Company in the State of Delaware;

(j) not merge or consolidate with, or agree to merge or consolidate with, or purchase substantially all of the assets of, or otherwise acquire, any business, business organization or division thereof, or any other Person;

(k) not take any action or omit to take any action, which action or omission could result in a breach in any material respect of any of the representations and warranties set forth in Section 2;

(l) not take any action or omit to take any action, which action or omission could require disclosure on Schedule 3.10;

(m) not intentionally take any action reasonably likely to have a Material Adverse Effect and promptly advise Buyer in writing of any event, occurrence, fact, condition, change or development that, individually or in the aggregate, would reasonably be expected to have or result in a Material Adverse Effect or a breach of this Section 5.1;

(n) not make or change any Tax election, change any annual Tax accounting period, adopt or change any method of Tax accounting, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, surrender or compromise any right to claim a Tax refund, consent to any extension or waiver of the limitations period applicable to any Tax claim or assessment, in each case, other than any of the foregoing actions that are not Material and which are taken in the Ordinary Course of Business consistent with past practice;

(o) maintain its inventory and supplies at a level sufficient to support normal operations of the Business until the Closing Date and for a period of at least thirty (30) days thereafter, except with respect to fuel for vehicles and locomotives, which shall be maintained solely to the extent that vehicles and locomotives shall contain levels of fuel, as of the Closing Date, that are normal for operations of the Company;

(p) not agree or otherwise commit to do any of the foregoing activities that it has agreed not to do under the terms of this Section 5.1; and

(q) pay the full amount of the remaining balance owed by the Company pursuant to certain notes issued to acquire certain locomotives, which amount is estimated to be approximately \_\_\_\_\_ as of the date of this Agreement.

5.2 No Solicitation. During the term of this Agreement, Sellers and the Company shall not, and shall cause each Representative and Affiliate of any of them not to, (a) directly or indirectly solicit or encourage any inquiries or proposals for, or enter into or continue any discussions with respect to, the acquisition by any Person (other than Buyer and its Affiliates and Representatives) of any Interests or any other securities of the Company, or all or substantially all of the Business or of the assets of the Company (an "Acquisition Transaction"), or (b) furnish or permit to be furnished any non-public information concerning the Company or its business and operations to any Person (other than Buyer and its Affiliates and Representatives), other than information furnished in the ordinary course of business. Sellers shall promptly notify Buyer of any inquiry or proposal received by Sellers, the Company, or any Representative or Affiliate of any of them with respect to any such Acquisition Transaction. Sellers and the Company shall immediately cease and cause to be terminated any existing activities, discussions or negotiations, whether involving the Company, themselves or any Representative, with any Person other than Buyer in respect of any Acquisition Transaction, except that Sellers and the Company may notify any such Person that they are not interested in pursuing any such inquiry or proposal at such time. The receipt by Sellers or the Company of any such inquiry or proposal for a Acquisition Transaction shall not constitute a breach of the covenants contained in this Section 5.2, provided that Sellers and the Company provide Buyer with prompt notice of any such inquiry or proposal and refrain from any discussion or negotiation with the Person who submitted the inquiry or proposal except to notify such Person that Sellers and the Company are not interested in pursuing the inquiry or proposal at such time.

5.3 Access and Information. Subject to the confidentiality provisions set forth in Section 12.10 below, Sellers and the Company shall, and shall use commercially reasonable efforts to cause their respective Representatives to, give Buyer and its Representatives full access during reasonable business hours to all of such Person's respective properties, assets, books, contracts, commitments, reports and records relating to the Company and the Business, and furnish to them all such documents, records and information with respect to the properties, assets and Business of the Company and copies of any work papers relating thereto as Buyer shall from time to time reasonably request. Any such investigation and examination shall be conducted upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law.

5.4 Public Announcements. Except as required by applicable Law, Sellers and the Company shall not (and shall cause their respective Representatives not to) make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior written consent of Buyer.

5.5 Updating the Disclosure Schedules. Sellers shall deliver to Buyer, five (5) Business Days prior to the Closing Date, a written update or supplement to the Disclosure Schedules reflecting events, matters, items or facts occurring after the date hereof. To the extent that any such updated or supplemented Disclosure Schedules reflect events, matters, items or facts which have occurred after the date hereof, then, upon the consent of Buyer, the Disclosure Schedules shall be deemed to be amended as of the Closing Date to include the information on such updated or supplemented Disclosure Schedules. No updated or amended Disclosure Schedules shall be deemed an amendment to this Agreement or the related Schedules without the written consent of Buyer, nor will any such updated or amended Disclosure Schedules constitute a waiver of the condition specified in Section 8.2(a) hereof or a limitation of Buyer's rights under Section 9.2 hereof; provided, however, that if Buyer consents to any such updated or supplemented Disclosure Schedules and the Closing occurs, no events, matters, items or facts set forth in any such updated or supplemented Disclosure Schedules shall be the basis for any claim by Buyer against the Company or Sellers for indemnification or otherwise.

5.6 Further Actions.

(a) Sellers and the Company shall use commercially reasonable efforts to take or cause to be taken all actions, and to do or cause to be done all other things, necessary, proper or advisable in order for each to fulfill and perform his or its obligations in respect of this Agreement or otherwise to consummate and make effective the transactions contemplated hereby and thereby.

(b) Sellers and the Company shall (i) make, or cause to be made, all filings and submissions required under any Law applicable to any of them as promptly as practicable and (ii) use commercially reasonable efforts to obtain or make, or cause to be obtained or made, all Governmental Approvals and other Consents necessary to be obtained or made by the Company or Sellers in each case in connection with this Agreement or the consummation of the transactions contemplated hereby.

(c) Sellers and the Company shall coordinate and cooperate with Buyer in exchanging such information and supplying such reasonable assistance as may be reasonably requested by Buyer in connection with the filings and other actions contemplated by Section 6.2.

(d) At all times prior to the Closing Date, Sellers and the Company shall promptly notify Buyer in writing of any fact, condition, event or occurrence that would reasonably be expected to result in the failure of any of the conditions contained in Sections 8.1 and 8.2 to be satisfied, promptly upon becoming aware of the same.

**Section 6. Covenants of Buyer.**

6.1 Public Announcements. Buyer shall be permitted to make public announcements regarding the transactions contemplated hereby but shall give Sellers and the Company notice and a copy of any such announcement prior to making any public announcement.

6.2 Further Actions.

(a) Buyer shall use commercially reasonable efforts to take or cause to be taken all actions, and to do or cause to be done all other things, necessary, proper or advisable in order for Buyer to fulfill and perform its obligations in respect of this Agreement or otherwise to consummate and make effective the transactions contemplated hereby and thereby.

(b) Buyer shall, as promptly as practicable, (i) make, or cause to be made, all filings and submissions required under any Law applicable to Buyer, including without limitation any securities Laws, as promptly as practicable and (ii) use commercially reasonable efforts to obtain or make, or cause to be obtained or made, all Governmental Approvals and other Consents necessary to be obtained or made by Buyer, in each case in connection with this Agreement or the consummation of the transactions contemplated hereby or thereby. Without limiting the generality of the foregoing, Buyer shall promptly seek any authorization required from the Surface Transportation Board for the purchase of the Interests.

6.3 Certain Notices. At all times prior to the Closing Date, Buyer shall promptly notify Sellers in writing of any fact, condition, event or occurrence that would reasonably be expected to result in the failure of any of the conditions contained in Sections 8.1 and 8.3 to be satisfied, promptly upon becoming aware of the same.

**Section 7. Certain Additional Covenants.**

7.1 Taxes.

(a) Tax Return Preparation.

(i) After the Closing Date, the Seller Representative, at its own cost and expense, shall be responsible for preparing and timely filing all Tax Returns of the Company for taxable periods ending on or prior to the Closing Date. Such Tax Returns will report the operations of the Company in accordance with applicable Law and consistent with past practices of the Company. The Seller Representative shall provide the Buyer copies of such Tax Returns in the form proposed to be filed at least thirty (30) days prior to the due date of any such Tax Returns, and such Tax Returns shall not be filed without the Buyer's consent, which shall not be unreasonably withheld, conditioned or delayed.

(ii) Except as set forth in Section 7.1(a)(i), the Buyer, at its own cost and expense, shall be responsible for preparing and filing all Tax Returns of the Company due following the Closing Date.

(b) Cooperation. Buyer, Sellers and the Company shall cooperate with respect to the filing of Tax Returns pursuant to this Section 7, and any Tax audit or administrative or court proceeding relating to Taxes for any Pre-Closing Tax Period or Straddle Period, provided, that such cooperation shall not unreasonably interfere with the respective conduct of the businesses of the parties. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such Tax Return, audit or proceeding.

(c) Transaction-Related Taxes. All sales, use, stamp, documentary, filing, recording, transfer or similar fees or Taxes or governmental charges as levied by any taxing authority (including any interest and penalties) in connection with the transactions contemplated by this Agreement shall be paid by Sellers so long as the total amount of any such fees, charges or Taxes is less than . Any such fees, charges or Taxes of or more shall be paid by Buyer. The Seller Representative shall file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, the Buyer will join in the execution of any such Tax Returns and other documentation.

(d) Terminate Tax Sharing Agreements. Sellers shall cause all Tax sharing agreements or similar agreements with respect to or involving the Company to be terminated as of the Closing Date and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder.

(e) Tax Claims.

(i) If, after the Closing Date, Buyer or the Company receives notice of a claim with respect to Taxes for a Pre-Closing Tax Period ("Tax Claim") from any taxing authority Buyer and the Company shall promptly and in any event no more than twenty (20) days following receipt of a written notice of such Tax Claim, give written notice to the Seller Representative of such a Tax Claim.

(ii) Within twenty (20) days after delivery of notification from Buyer or the Company pursuant to this Section 7.1 the Seller Representative shall, upon written notice thereof to Buyer, have the right to exercise, on behalf of the Sellers and at the expense of the Sellers, control over the handling, disposition and/or settlement of any Tax Claim regarding any Pre-Closing Tax Period of the Company; provided, that the Seller Representative shall defend such Tax Claim diligently and in good faith, and shall keep the Buyer reasonably informed as to the status of and material developments in such Tax Claim, including by providing the Buyer with copies of any written materials relating to such Tax Claim received from or submitted to the relevant Governmental Authority; provided further that if such Tax Claim could have a Material Adverse Effect on Buyer, any Affiliate of Buyer or the Company (1) the Seller Representative shall consult with Buyer before taking any significant action in connection with such Tax Claim; (2) the Seller Representative shall consult with Buyer and offer Buyer an opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Claim; (3) Buyer (or an Affiliate of Buyer) shall be entitled to participate, at its own expense, in such Tax Claim, including by attending meetings with the relevant Governmental Authority; and (4) the Seller Representative shall not settle, compromise or abandon the Tax

Claim without obtaining prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

(iii) If Sellers fail to exercise their right to control the conduct of any Tax Claim described in Section 7.1(e)(ii), Buyer may conduct, defend and settle the Tax Claim in such manner as it deems appropriate in its sole discretion, and Sellers shall pay or reimburse Buyer, solely from the Escrow Funds, for any costs or expenses incurred in connection with the conduct, defense or settlement of such Tax Claim. Buyer shall have the right, at its own expense, to exercise control over the handling, disposition and/or settlement of any Tax Claim regarding any Tax Return other than as described in Section 7.1(e)(i) above (including the right to settle or otherwise terminate any contest with respect thereto); provided, that in the case of any Tax Return for a period beginning before the Closing Date, the Buyer shall not settle any issue that would result in a required indemnification payment by the Sellers under Section 7.1(f) without the prior consent of the Seller Representative, which consent shall not be unreasonably withheld, conditioned or delayed. No Tax Claim under this subsection may be settled without the prior written consent of the Seller Representative and Buyer, which consent shall not be unreasonably withheld, delayed or conditioned. Buyer, Sellers and the Company and each of their respective Affiliates shall reasonably cooperate with each other in contesting any Tax Claim.

(f) Indemnification.

(i) After the Closing Date, and regardless of whether Buyer would be entitled to indemnification for such amount under Section 10.2, Sellers shall pay or cause to be paid, be liable for, and indemnify, defend and hold harmless Buyer and the Company and each of their respective Affiliates, successors and assigns, solely from the Escrow Funds, from and against any and all Taxes of the Company, or for which the Company is or may become liable, for or with respect to any Pre-Closing Tax Period (calculated after taking into account any estimated income Tax payments or other income Tax payments made by the Company prior to the Closing Date), except to the extent that such Taxes are specifically reflected as a current liability in the Closing Working Capital as finally determined pursuant to Section 1.4(c). The parties agree that any employment and withholding Tax obligations arising from transactions contemplated by this Agreement that occur at, prior to or in connection with the Closing shall be treated as Taxes of the Company for a Pre-Closing Tax Period. In the case of a Tax period that includes but does not end on the Closing Date (a "Straddle Period"), the portion of the Taxes for such period that is attributable to the Pre-Closing Tax Period shall be determined on the basis set forth in Section 7.1(f)(ii).

(ii) Any Taxes for a Straddle Period shall be apportioned between the portion of such period ending on the Closing Date and the portion of such period beginning after the Closing Date, in the case of real and personal property Taxes, on a per diem basis, and in the case of other Taxes, based on the actual activities, taxable income or taxable loss of the Company during the portion of the period ending on the Closing Date and the portion of the period beginning after the Closing Date determined as if the books of the Company were closed as of close of business on the Closing Date.

(iii) Each Seller acknowledges and agrees that such Seller will indemnify, reimburse, and hold harmless Buyer, the Company and each of their respective Affiliates, successors and assigns, solely from such Seller's pro rata share of the Escrow Funds, with respect to any liability for Taxes that results from or is attributable to any underwithholding of income or employment Taxes that is later determined to have occurred with respect to consideration received or deemed to have been received by such Seller pursuant to this Agreement.

(iv) Claims made pursuant to this Section 7.1(f) may only be asserted on or prior to 60 days after the expiration of the applicable statute of limitations (including extensions thereof).

## **Section 8. Conditions Precedent.**

8.1 Conditions to Obligations of Each Party. The obligations of Sellers, the Company and Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following conditions:

(a) No Injunction, etc. Consummation of the transactions contemplated hereby shall not have been restrained or enjoined, by any applicable Law, or otherwise prohibited or made illegal by any applicable Law, including any order, injunction, decree or judgment of any court or other Governmental Authority; and no such Law that would have such an effect shall have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement. No action or proceeding shall be pending or to the Company's Knowledge, threatened by any Governmental Authority or other Person on the Closing Date before any court or other Governmental Authority to restrain, enjoin or otherwise prevent the consummation of the transactions contemplated hereby or to recover any material damages or obtain other material relief as a result of such transactions, or that otherwise relates to the application of any such Law.

8.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver on or prior to the Closing Date of the following additional conditions, which Sellers and the Company shall use reasonable commercial efforts to cause to be fulfilled:

(a) Representations, Performance.

(i) Each representation and warranty of Sellers and/or the Company contained in Section 2 and Section 3 shall be true and correct in all material respects both as of the date hereof and as of the Closing Date.

(ii) Sellers and the Company shall have duly performed and complied with all agreements, covenants, and conditions required by this Agreement to be performed or complied with by Sellers and the Company prior to or on the Closing Date.

(iii) Sellers shall have delivered to Buyer a certificate, dated the Closing Date and executed by each of the Sellers, to the effect set forth above in this Section 8.2(a).

(b) Delivery of Interests. At the Closing, each Seller shall have delivered an instrument, in a form attached hereto as Exhibit 8.2(a), evidencing the transfer of the Interests of such Seller to Buyer as provided in Section 1.1(a).

(c) Consents. All Governmental Approvals required to be made or obtained by Sellers or the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby shall have been made or obtained and be in full force and effect without the imposition of any condition (other than the imposition by the STB of standard labor protective conditions). Complete and correct copies of all such Governmental Approvals shall have been delivered to Buyer.

(d) Resignations. All directors, managers, and officers of the Company shall have submitted their resignations or have been removed from office effective as of the Closing Date.

(e) Opinion of ESOP financial Advisor. At Closing, the Company shall deliver to Buyer a copy of the opinion letter issued by the financial advisor to the trustee of the Marquette Rail Employee Stock Ownership Plan (the "ESOP") certifying that (1) the Purchase Price paid by Buyer for the Interests represents more than adequate consideration, within the meaning of Section 3(18) of ERISA, as of the Closing Date and (2) the financial terms and conditions of the transactions undertaken pursuant to this Agreement, taken as a whole, are fair and reasonable to the ESOP from a financial point of view.

(f) Material Adverse Change. After the execution of this Agreement, there shall not have occurred any event, change or occurrence that, either individually or together with any other event, change or occurrence, would result or would reasonably be expected to result in a Material Adverse Change.

8.3 Conditions to Obligations of Sellers and the Company. The obligation of Sellers and the Company to consummate the transactions contemplated hereby shall be subject to the fulfillment or waiver, on or prior to the Closing Date, of the following additional conditions, which Buyer agrees to use reasonable commercial efforts to cause to be fulfilled:

(a) Representations, Performance, etc.

(i) The representations and warranties of Buyer contained in Section 3 shall be true and correct in all material respects as of the date hereof and as of the Closing Date.

(ii) Buyer shall have duly performed and complied with all agreements, covenants, and conditions required by it prior to or on the Closing Date.

(iii) Buyer shall have delivered to Sellers a certificate dated the Closing Date and signed by an authorized officer of Buyer to the effect set forth above in this Section 8.3(a).

(b) Payment of Purchase Price. Buyer shall have performed and complied with in all material respects the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Buyer at or before the Closing, and, at the Closing, Buyer shall have paid the Purchase Price.

(c) Consents. All Governmental Approvals required to be made or obtained by Buyers in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby shall have been made or obtained and be in full force and effect without the imposition of any condition (other than the imposition by the STB of standard labor protective conditions). Complete and correct copies of all such Governmental Approvals shall have been delivered to Sellers.

**Section 9. Termination.**

9.1 Termination. This Agreement may be terminated at any time prior to the Closing Date:

(a) By the written agreement of Buyer and Sellers;

(b) By either Buyer or Sellers by written notice to the other party after 5:00 p.m. Eastern time on July 2, 2012 if the transactions contemplated hereby shall not have been consummated pursuant hereto, unless (i) such date is extended by the mutual written consent of Buyer and Sellers or (ii) the failure to consummate the transactions contemplated hereby by such date shall be due to the breach by the terminating party of any of its covenants in this Agreement;

(c) By either Buyer or Sellers by written notice to the other party if the other party shall (and the terminating party shall not) have failed to perform and comply with, in all Material respects, all agreements, covenants and conditions hereby required to have been performed or complied with by such party prior to the time of such termination, and such failure shall not have been cured within fifteen (15) Business Days following notice of such failure.

9.2 Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 9.1, this Agreement shall become void and have no effect, without any obligation or liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers,

Representatives, stockholders, members or Affiliates, except, in the event of termination pursuant to Section 9.1(c), for (a) the obligations specified in Section 10 and Section 12, and (b) any liability resulting from such party's intentional breach of this Agreement prior to such termination.

## **Section 10. Indemnification.**

### **10.1 Survival of Representations, Warranties and Covenants.**

(a) The representations, warranties and covenants contained in this Agreement and the other Documents shall survive the Closing and continue in full force and effect after the consummation of the transactions contemplated hereby; provided, however, that any claim for Losses arising out of or with respect to the inaccuracy or breach of any representation or warranty must be asserted in writing by notice given to the other party on or before December 31, 2013 (the "Escrow Period"), failing which any such claim shall be waived and extinguished; provided further that those representations and warranties contained in Sections 2.1, 2.2, 2.3, 2.7, 3.1 and 3.2 shall survive indefinitely and the representations and warranties in Section 3.6 shall survive for the full period of all applicable statutes of limitation (after giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days.

(b) Any claims for indemnification with respect to a representation or warranty asserted in writing as provided for in this Section 10 prior to the expiration of the Escrow Period shall survive until finally resolved. For convenience of reference, the date upon which any representation or warranty contained herein shall terminate is referred to herein as the "Survival Date."

(c) No third party other than the Indemnified Persons shall be a third party or other beneficiary of such representations, warranties or covenants and no such third party shall have any rights of contribution with respect to such representations or warranties or any matter subject to or resulting in indemnification under this Section 10 or otherwise.

### **10.2 Sellers' Indemnification of the Buyer.**

(a) From and after the Closing Date (but subject to Sections 10.1(a) and 10.4), each Seller shall severally, but not jointly, hold harmless and indemnify each of the Buyer, the Company, their respective Affiliates and their respective officers, directors and shareholders and their successors and assigns (the "Buyer Indemnified Persons") from and against any and all Losses arising out of or in any manner incident, relating or attributable to any inaccuracy in, or breach of (i) any representation or warranty of such Seller contained in Section 2 of this Agreement or (ii) any covenant of such Seller contained in this Agreement; provided, however, in the event of any Losses during the Escrow Period, the Buyer Indemnified Persons shall first utilize any Escrow Funds, up to each Seller's pro rata share of the Escrow Funds, prior to seeking recourse from such Seller directly under this Section 10.1(a). The liability of such Seller with respect to this Section 10.1(a) shall be limited to the amount of the Purchase Price received by such Seller.

(b) From and after the Closing Date (but subject to Sections 10.1(a) and 10.4), the Sellers shall, solely from the Escrow Funds except as set forth below, hold harmless and

indemnify, each of the Buyer Indemnified Persons from and against any and all Losses arising out of or in any manner incident, relating or attributable to:

(i) any inaccuracy in, or breach of, any representation or warranty or any other obligation of the Company contained in or arising under this Agreement;

(ii) subject to Section 10.2(d), conditions that existed as of Closing as a result of acts or omissions of the Company after the inception of its operations or events that occurred after the inception of operations of the Company but prior to Closing, which result from or relate to:

(1) the presence, threatened Release, Release or disposal of a Hazardous Substance at, on, beneath or in the vicinity of the Leased Real Property;

(2) the operation or violation of any Environmental Law by or against the Company or at the Leased Real Property; or

(3) the presence, threatened Release, Release or disposal of a Hazardous Substance generated, treated, stored, accumulated, transported, owned or disposed by the Company.

Any liability of the Sellers with respect to this Section 10.2(b) shall be limited to the amount of the Escrow Funds, except that any liability arising from the inaccuracy in, or breach of, any representation or warranty specified in Section 10.1(a) to survive the Escrow Period shall not be limited to the amount of the Escrow Funds.

(c) Except for any Buyer Indemnified Persons' ability to seek specific performance or injunctive relief, and except for a fraud claim against a Seller, the indemnity provided in this Section 10.2 shall be the sole and exclusive remedy of the Buyer Indemnified Persons for Losses relating to any breach by the Company or such Seller of any representation, warranty or covenant or other provision contained in this Agreement or otherwise arising out the negotiation, entry or consummation of the transactions contemplated by this Agreement. In furtherance of the foregoing, each of the parties hereby waives, to the fullest extent permitted by applicable Law, any and all other rights, claims or causes of action (including rights of contribution, if any) known or unknown, foreseen or a proceeding, which exist or may arise in the future, that such party may have against any other party, as the case may be, arising under or based upon this Agreement, any applicable Law (including any Environmental Law, securities law or common law) or otherwise.

(d) Notwithstanding anything to the contrary set forth in this Agreement, the Buyer Indemnified Persons shall not be entitled to indemnification under this Section 10.2 for any Tax liability incurred by the Company arising from: (i) any merger, liquidation, business combination or other structural, tax or accounting change (including being included in a consolidated group) to the Company made by or at the request of Buyer (or as otherwise required by law or regulation) or as a result of Buyer acquiring the Company, on or after the Closing Date, (ii) any Tax arising out of the Company becoming a part of a consolidated group of the Buyer, (iii) any Tax election(s) made by or on behalf of Buyer immediately before, on or after the Closing Date due to the transactions contemplated by this Agreement or the Buyer's tax

requirement imposed on the Company, or (iv) any Taxes incurred by the operation of the Company's business on or after the Closing Date. Notwithstanding anything to the contrary set forth in this Agreement, the Buyer Indemnified Persons shall not be entitled to indemnification under this Section 10.2 for any Losses arising under or relating to any Environmental Condition or Environmental Law, Release or Hazardous Substance that are the liability or responsibility of CSX Transportation, Inc. pursuant to the Land and Track Lease Agreement dated November 11, 2005 between CSX Transportation, Inc. and the Company, and Buyer and the Company shall look solely to CSX Transportation, Inc. for reimbursement or compensation for any such Losses.

**10.3 Buyer's Indemnification of the Sellers.** Buyer hereby agrees to indemnify, defend, protect and hold harmless Sellers, Sellers' respective officers, directors, employees and shareholders, their successors and assigns (collectively, the "Sellers Indemnified Persons") from, against and with respect to any and all Losses arising out of or in any manner, incident, relating or attributable to: (a) any inaccuracy in, or breach of, any representation or warranty of Buyer contained in the Agreement; or (b) any breach of, or any failure by Buyer to perform or observe any covenant, agreement or condition to be performed by the Buyer under this Agreement.

**10.4 De Minimis; Deductible.** Notwithstanding anything to the contrary in Sections 10.2 or 10.3, (a) Sellers shall not be liable under Section 10.2 for any individual breach of any representation or warranty to the extent such breach results in Losses of less than

(a "De Minimis Loss") (it being understood that a series or group of related individual breaches shall be aggregated together for purposes of this clause (a)), and (b) Sellers shall not have any liability under Section 10.2 with respect to breaches of any representations or warranties until the aggregate Losses, including De Minimis Losses, of the Buyer Indemnified Persons exceed \_\_\_\_\_), after which the Buyer Indemnified Persons shall be entitled to all such Losses in excess thereof up to the limitations, as may be applicable, as set forth in Section 10.2.

**10.5 Assertion of Claims.**

(a) No claim shall be brought under Sections 10.2 or 10.3 hereof unless the Indemnified Persons, or any of them, provide to Indemnifying Persons (a) prompt and timely written notice prior to the end of the applicable Survival Date as set forth in Section 10.1 of the existence of any such claim, specifying the nature and basis of such claim and the amount thereof, to the extent known, or (b) prompt and timely written notice prior to the end of the applicable date as set forth in Section 10.1 pursuant to this Section 10.5 of the assertion of liability by a third party, the existence of which might give rise to such a claim ("Third Party Claim"). Upon the giving of such timely written notice, the Indemnified Persons, or any of them, shall have the right to commence legal proceedings prior or subsequent to the applicable Survival Date for the enforcement of their rights under Sections 10.2 or 10.3 hereof, as the case may be, resulting from the assertion of a Third Party Claim, which shall be subject to the following terms and conditions:

(b) The Indemnified Persons shall promptly give written notice to the Indemnifying Persons of any Third Party Claim that might give rise to any Loss by the Indemnified Persons, stating the nature and basis of such Third Party Claim, and the amount thereof to the extent known. Such notice shall be accompanied by copies of all relevant

documentation with respect to such Third Party Claim, including, without limitation, any summons, complaint or other pleading that may have been served, any written demand or any other document or instrument. Subject to the notice requirements of Section 10.1(a), the failure to provide written notice to the Indemnifying Persons will not relieve the Indemnifying Persons from any liability which they may have to the Indemnified Persons unless the Indemnifying Person reasonably demonstrates that such failure directly results in the loss or compromise of any rights or defenses of the Indemnifying Persons and that the Indemnifying Persons were not otherwise aware of such action or claim.

(c) If an Indemnified Person gives timely notice in accordance with the notice requirements of Section 10.1(a) to the Indemnifying Person pursuant to Section 10.5(a) of the assertion of a Third Party Claim, the Indemnifying Person shall be entitled to participate in and assume the defense of such Third Party Claim using counsel reasonably satisfactory to the Indemnified Person; provided, however, that the Indemnifying Person shall not be entitled to assume the defense of such Third Party Claim if (i) the Indemnifying Person is also a Person against whom the Third Party Claim is made and the Indemnified Person determines in good faith that (A) joint representation would be inappropriate, or present a conflict of interest, or (B) there are legal defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Person; (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third Party Claim and provide indemnification with respect to such Third Party Claim; (iii) the Third Party Claim seeks, or is reasonably likely to seek or result in, the imprisonment of, the imposition of a criminal penalty or fine against, or the imposition of an equitable remedy with respect to, the Indemnified Persons; or (iv) the damages sought in such Third Party Claim, taken together with the estimated costs of defense thereof and the amount claimed by the Indemnified Persons with respect to any unresolved claims for indemnification then pending, is greater than the applicable limitation set forth in Section 10.2. Subject to the foregoing, after notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third Party Claim, the Indemnifying Person shall, so long as it diligently conducts such defense, (i) not be liable to the Indemnified Person under this Section 10.5 for any fees of other counsel or any other expenses with respect to the defense of such Third Party Claim subsequently incurred by the Indemnified Person in connection with the defense of such Third Party Claim and (ii) have full control over the conduct of such proceeding. If the Indemnifying Person assumes the defense of a Third Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Person without the Indemnified Person's written consent unless (A) there is no finding or admission of any violation of Law or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability or obligation (including without limitation any obligation to take or to refrain from taking any action) with respect thereto. If notice is given to an Indemnifying Person of the assertion of any Third Party Claim and the Indemnifying Person does not, within ten (10) days after such notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third Party Claim, the Indemnifying Person will be deemed to have waived the right to defend such Third Party Claim and shall be bound by any determination made in such Third Party Claim or any compromise or settlement effected by the Indemnified Person.

(d) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third Party Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third Party Claim, but the Indemnifying Person will not be bound by any determination of any Third Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its consent (which shall not be unreasonably withheld).

(e) With respect to any Third Party Claim subject to indemnification under this Section 10.5: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third Party Claim and any related proceedings at all stages thereof where such Person is not represented by its own counsel, (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim and (iii) the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges.

#### 10.6 Mitigation.

(a) Any payment of an indemnification claim hereunder shall be accounted for as an adjustment to the Purchase Price for Federal, State and local income Tax purposes. Anything to the contrary herein notwithstanding, an Indemnifying Party shall not be liable for Losses in excess of the actual Losses suffered by an Indemnified Party as a result of the act, circumstance or condition for which indemnification is sought. The amount for which indemnification is provided under Section 10.2 shall be (i) net of any amounts actually recovered by the Indemnified Party under applicable insurance policies with respect to such Losses after utilizing good faith, commercially reasonable efforts to assert and pursue a claim under such policies, and (ii) net of any amounts actually recovered from any Third Person (by contribution, indemnification or otherwise) after utilizing good faith, commercially reasonable efforts to assert and pursue its applicable rights against such Persons.

(b) Neither any Seller nor Buyer shall have any liability under any provision of this Agreement, any certificate or document executed and delivered pursuant to this Agreement, applicable Law or otherwise, for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity or diminution in value relating to the breach, alleged breach, violation or alleged violation of this Agreement, any certificate or document executed and delivered pursuant to this Agreement, applicable Law or otherwise (collectively, "Consequential Damages"), even if such party knew or should have known of the existence or possibility of such Consequential Damages, and each party hereby irrevocably and unconditionally releases and waives any claims against the other parties regarding such Consequential Damages.

(c) Buyer and Sellers shall take and shall cause their respective representatives to take commercially reasonable steps to mitigate any Losses incurred by such party under Sections 10.2 or 10.3, as the case may be, upon becoming aware of any event that

would reasonably be expected to, or does, give rise to such Losses, including incurring costs only to the extent reasonably necessary to remedy the breach that gives rise to such Losses. In the event that Buyer or Sellers shall fail to take such commercially reasonable steps, then notwithstanding anything to the contrary in this Agreement, the other party shall not be required to indemnify for any Losses that could reasonably be expected to have been avoided if such steps had been taken.

10.7 Reliance. Buyer acknowledges and agrees that neither the Company nor any Seller (a) has made any representation or warranty, expressed or implied, as to the Company or any Seller or as to the accuracy or completeness of any information regarding the Company or any Seller furnished or made available to Buyer and its representatives, except as expressly set forth in this Agreement and (b) shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of or reliance on, any such information or any information documents or material made available to Buyer in any "data rooms," management presentations or in any other form, including without limitation opportunities to communicate with customers of the Company or with CSX Transportation, Inc., in expectation of or in connection with, the transactions contemplated hereby, except as expressly set forth in this Agreement. Buyer further acknowledges and agrees that it has been afforded a full and adequate opportunity to perform a review of such information made available to it by the Company and that its decision to proceed with the transactions contemplated by this Agreement is based solely upon Buyer's independent evaluation of such information and other information obtained or developed independently by Buyer.

## **Section 11. Definitions.**

11.1 Terms Generally. The words "hereby", "herein", "hereof", "hereunder" and words of similar import refer to this Agreement as a whole (including any Exhibits and Schedules hereto) and not merely to the specific section, paragraph or clause in which such word appears. All references herein to Sections, Exhibits and Schedules shall be deemed references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The definitions given for terms in this Section 11 and elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term "day" means a calendar day unless specified as a Business Day. Except as otherwise expressly provided herein, all references to "dollars" or "\$" shall be deemed references to the lawful money of the United States of America. The words "in writing" or other similar phrase shall include by electronic format.

11.2 Certain Terms. Whenever used in this Agreement (including in the Schedules), the following terms shall have the respective meanings given to them below or in the Sections indicated below:

Affiliate: of a Person means a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person, including, but not limited to, a Subsidiary of the first Person, a Person of which the first Person is a Subsidiary, or another Subsidiary of a Person of which the first Person is also a Subsidiary.

“Control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise.

Agreement: this Purchase Agreement, including the Exhibits and Schedules hereto.

Business: the activities of the Company in connection with the provision of rail transportation services and related matters.

Business Day: any day other than Saturday, Sunday, or a day on which banks in the State of Michigan are closed for regular banking business.

Buyer: as defined in the first paragraph of this Agreement.

Buyer Indemnified Persons: as defined in Section 10.2(a).

Cash and Cash Equivalents: as of the date in question, all cash and cash equivalent assets (including checks received by the Company prior to the date in question) held by the Company less the sum of (a) all cash and cash equivalents (but only to the extent included in cash and cash equivalent assets) that are not freely useable by the Company because they are subject to restrictions or limitations on use, whether by contract or otherwise, and (b) the amount of any unpaid checks and wire transfers issued prior to the date in question, all determined in accordance with GAAP.

Closing: as defined in Section 1.1.

Closing Date: as defined in Section 1.1.

Code: the Internal Revenue Code of 1986, as amended.

Company: as defined in the preamble.

Company Operating Agreement: the Limited Liability Company Agreement of the Company dated as of November 3, 2005.

Consent: any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, order, registration, declaration, filing, written report or written notice of, with or to any Person.

Contract: any contract, agreement, indenture, note, bond, mortgage, loan, lease, instrument, commitment or undertaking, whether written or oral.

Debt: (a) any indebtedness for borrowed money and obligations evidenced by a note, bond, debenture or similar instrument; (b) any unpaid interest and bank fees owing on any such indebtedness; (c) any obligations in respect of capitalized leases (calculated in accordance with GAAP); (d) any obligations in respect of banker’s acceptances or letters of credit; (e) all

indebtedness or obligations of the types referred to in the preceding clauses (a) through (d) of any other Person secured by any Lien on any assets of the Company, even though the Company has not assumed or otherwise become liable for the payment thereof; (f) any payments that become due solely due to the consummation of the transactions contemplated hereunder; (g) any obligations in the nature of guarantees of obligations of the type described in clauses (a) through (f) above of any other Person; (h) any obligation in respect of interest under any existing interest rate swap or hedge agreement entered into by the Company prior to Closing; (i) any obligations to make payments of the deferred purchase price owed in connection with any acquisitions; and (j) any securitizations, synthetic leases or similar off-balance sheet facilities of the Company in existence immediately prior to the Closing; but excluding any obligations of the Company to customers pursuant to agreements between the Company and any such customers providing for refunds or the reduction of freight rates.

Disclosure Schedules: the schedules attached to this Agreement and delivered by the Company and the Sellers to the Buyer on the date of this Agreement, which are numbered to correspond to certain sections in this Agreement, including the numbered sections contained in Section 3.

DLLCA: the Delaware Limited Liability Company Act.

Employee Plans: all “employee benefit plans” (as defined in Section 3(3) of ERISA) of the Company or any ERISA Affiliate and all bonus, stock or other security option, stock or other security purchase, stock or other security appreciation rights, incentive, deferred compensation, Company options, retirement or supplemental retirement, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs, insurance and other similar fringe or employee benefit plans, programs or arrangements, and any current or former employment or executive compensation or severance agreements, written or otherwise, which are or have ever been sponsored, contributed to (or required to be contributed to) or maintained by or entered into by the Company or an ERISA Affiliate for the benefit of, or relating to, any present or former employees, directors, agents, or consultants of the Company or an ERISA Affiliate, whether or not such plan is terminated.

Environmental Condition: a condition relating to, or arising or resulting from a failure to comply with any applicable Environmental Law or Environmental Permit, or any release or threatened release of a Hazardous Substance into the environment, buildings or facilities, or otherwise arising out of or relating to the use, storage, transport or handling of Hazardous Substances.

Environmental Law(s): all applicable foreign, federal, state, regional, county or local, statutes, laws, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, agreements, licenses or other requirements or restrictions of law pertaining to (a) protection of the environment, health, safety of persons or wildlife, (b) protection or use of surface water and groundwater, or (c) Hazardous Substances or pollution (including, without limitation, regulation of releases and disposal to air, land, water and groundwater) now or hereafter in effect and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and

Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.* (“CERCLA”), Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.* (“RCRA”), Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 *et seq.*, Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, Hazardous Materials Transportation Act 49 U.S.C. App. §§ 1801 *et seq.*, Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651 *et seq.*, Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, any similar or implementing state law, and all successor statutes, amendments, rules, orders, directives and regulations promulgated thereunder.

Environmental Permits: any Governmental Permits required under any Environmental Law.

ERISA: the Employee Retirement Income Security Act of 1974, as amended, and any successor Law, and all Regulations issued pursuant thereto.

ERISA Affiliate: any trade or business (whether or not incorporated) which is a member of a controlled group or which is under common control with the Company within the meaning of Section 414 of the Code; provided, however, for purposes of applying Treasury Regulation Section 1.404(c)-2, the term “50 percent” shall be used in lieu of “80 percent.”

Escrow Agent: as defined in the Escrow Agreement.

GAAP: Generally accepted accounting principles as in effect in the United States on the date of this Agreement, consistently applied.

Governmental Approval: any Consent of, with or to any Governmental Authority.

Governmental Authority: any government; any state or other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any government authority, agency, department, board, commission or instrumentality of the United States, any State of the United States or any political subdivision thereof; or any court, tribunal or arbitrator.

Governmental Permit: any license, permit, application, Consent, certificate, registration, approval and authorization pending before, issued, granted, given or otherwise made available by, or under the authority of, any Governmental Authority.

Hazardous Substance: any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, condition, object or material which is or may be hazardous to human health or safety or the environmental and which is subject to regulation pursuant to any Environmental Laws.

Indemnified Person: as defined in Section 10.3.

Indemnifying Person: as defined in Section 10.3.

IRS: the Internal Revenue Service.

Inventory: all inventories, including, without limitation, maintenance of way materials and maintenance of equipment materials that are related to the Business and maintained, held or stored by or for the Company at any location.

Knowledge: with respect to any natural Person, such Person's actual knowledge, after reasonable inquiry; and, with respect to any other Person, the actual knowledge, after reasonable inquiry of its executive officers and directors (or, if none, Persons of comparable responsibility with respect to such Person); provided that the Knowledge of Marquette Rail Corp. shall include the actual knowledge, after reasonable inquiry, of the Trustee of the Marquette Rail Employee Stock Ownership Plan.

Law: all applicable provisions of all (a) constitutions, treaties, statutes, laws, codes, rules, regulations, ordinances or orders of any Governmental Authority, (b) Governmental Approvals and (c) written orders, decisions, injunctions, judgments, awards and decrees of or written agreements with any Governmental Authority.

Leased Real Property: the real property leased by the Company as tenant, together with, to the extent leased by the Company, all buildings and other structures, facilities or improvements currently located thereon, all fixtures, systems, equipment and items of personal property of the Company attached or appurtenant thereto, and all easements, licenses, rights and appurtenances relating to the foregoing.

Liability: any Debt or other liability or obligation of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due.

Lien: any mortgage, pledge, deed of trust, hypothecation, right of others, claim, security interest, encumbrance, burden, title defect, title retention agreement, lease, sublease, occupancy agreement, easement, covenant, condition, encroachment, voting trust agreement, interest, option, right of first offer, negotiation or refusal, proxy, lien, charge or other restrictions or limitations of any nature whatsoever.

Litigation: any action, cause of action, claim, demand, suit, proceeding, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity, by or before any court, tribunal, arbitrator or other Governmental Authority.

Losses: except as limited by any provision of this Agreement, including without limitation Section 10.6, any and all costs, claims, damages, liabilities and out-of-pocket expenses (including reasonable attorneys' and accountants' fees and costs) suffered or incurred by any Indemnified Person for which such Indemnified Person is entitled to indemnification under Sections 10.2 or 10.3 hereof.

Material or Materially: meaning that the effect of a breach of a representation, warranty or covenant with respect to a term modified by such adjective or adverb would be a Material Adverse Effect or, if measurable in dollars, would be a detrimental effect of at least

Material Adverse Effect: any (a) event, occurrence, fact, condition, change, development or effect that is or would reasonably be expected to be materially adverse to the Business, operations, results of operations, condition (financial or otherwise), properties, assets or liabilities of the Company, taken as a whole, or (b) material impairment of the ability of Sellers or the Company to perform their respective obligations hereunder.

Material Contracts: any written Contract or group of related written Contracts with respect to the Business, including Contracts:

(i) relating to (A) the employment (as an employee or consultant) or termination of employment of any Person by the Company which may not be terminated without penalty or other obligation in excess of \_\_\_\_\_ (other than any severance payments required by Law) by the Company; or (B) the payment to any Person by the Company of any bonus award which is contingent on a sale of the Business or of a Seller's Interest;

(ii) which contains restrictions with respect to payment of dividends or any other distribution in respect of the Interests;

(iii) relating to Debt of the Company;

(iv) limiting the ability of the Company to engage in Business or to compete with any Person;

(v) of the Company with any labor union or any employee organization;

(vi) pursuant to which the Company is entitled or obligated to acquire any assets from a third party with a value in excess of \_\_\_\_\_

in the aggregate during any twelve (12)-month period other than the purchase of inventory and supplies in the Ordinary Course of Business;

(vii) pursuant to which the Company is obligated to provide goods or services to another Person with a total Contract value in excess of

in the aggregate in any twelve-month period, unless terminable, without penalty, by the Company on not more than thirty (30) days notice;

(viii) of the Company that relate to Employer Plans, and, if not plans or practices that are provided generally to employees or in which employees are generally permitted to participate, relate to agreements that provide for any bonus, pension, profit sharing, retirement or any other form of deferred compensation plan or any stock purchase, stock option, hospitalization insurance or similar plan or practice, whether formal or informal;

(ix) relating to the mortgaging, pledging or otherwise placing a lien on any of the assets of the Company, including documents related to any financing of any equipment;

(x) under which the Company has advanced or loaned any other person amounts in the aggregate exceeding

(xi) with respect to the investing of funds of the Company;

(xii) of the Company in the form of a license or royalty agreement (excluding licenses or agreements pertaining to "off-the-shelf" software;

(xiii) that provides for a guaranty of any Debt of the Company, other than endorsements made for collection;

(xiv) providing outstanding powers of attorney of the Company;

(xv) under which the Company is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by it;

(xvi) any confidentiality agreement or similar arrangement of the Company;

(xvii) other agreement of the Company whether or not entered into in the Ordinary Course of Business, except for this Agreement or the agreements contemplated hereby, which other agreement, if violated, would reasonably be expected to result in a Material Adverse Effect or which is not terminable by it on 30 days' or less notice without penalties; or

(xviii) pursuant to which the Company is obligated to provide or entitled to receive access or services, including trackage, haulage and run-through power rights, to or from another rail or other transportation services or access provider.

Net Debt: all Debt of the Company other than trade payables and other accounts payable included in Non-Cash Working Capital, including but not limited to any intercompany loans, less any intercompany receivables, to the extent that any such sums will not be paid in full and released at Closing.

Non-Cash Working Capital: (a) the sum of the current portion of (i) accounts receivables related to trade activities, and (ii) prepaid expenses and other current assets (excluding Cash and Cash Equivalents), and interest receivable, in each case of the Company, minus (b) the sum of (i) all reserves and allowances applicable to the items set forth in clause (a) (including chargebacks, returns and allowances, rebates, administration fees, allowance for doubtful accounts, reserves for cash discounts and other deductions), (ii) all accounts payable, payables to an Affiliate and other current liabilities of the Company, and (iii) the note receivable from Meserole, in each case determined in accordance with GAAP as of the Closing Date. For purposes of calculating Non-Cash Working Capital, (A) accounts receivable (after taking into account any unapplied payments actually received) that are more than One Hundred Twenty (120) days past due shall be reserved against in full and (B) salaries, wages, incentive payments, vacation, sick and personal days, 401(k) matching contributions and any other employee benefits relating to the Business, in each case accrued and unpaid as of the Closing Date, shall be accrued for as a current liability.

Notice of Claim: written notice from an Indemnified Person to one or more Indemnifying Persons setting forth (a) in the case of Losses other than Losses arising from Third Party Claims referred to in clause (a) of Section 10.3, the asserted Loss and the reasons why such Loss is asserted to be indemnified hereunder, and (b) in the case of Third Party Claims referred to in clause (a) of Section 10.3, setting forth the nature of such Third Party Claim.

Ordinary Course of Business: the usual, regular and ordinary course of Business of the Company consistent with the past custom and practice of the Business of the Company.

Organizational Documents: as to any Person that is an entity, its certificate or articles of incorporation, operating agreement, by-laws and/or other organizational documents.

Person: any natural person, firm, partnership, association, corporation, company, trust, business trust, Governmental Authority or other entity.

Pre-Closing Tax Period: (a) any taxable period that begins before the Closing Date and ends on or before the Closing Date, and (b) with respect to any other taxable period that includes the Closing Date, the portion of such taxable period prior to and including the Closing Date.

Representatives: any Person, its accountants, counsel, consultants (including actuarial, environmental and industry consultants), officers, directors, employees, agents and other advisers and representatives.

Receivables: any and all accounts receivable, notes and other amounts due or accruing due to the Company from any third party arising in connection with the Business.

Reference Balance Sheet: as defined in Section 3.7.

Regulation: any rule, regulation or code of any Governmental Authority.

Release: any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Substance into the environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Substance.

Securities Act: the Securities Act of 1933, as amended.

Seller Representative: Marquette Rail Corp.

Sellers Indemnified Persons: as defined in Section 10.3.

Sellers: as defined in the first paragraph of this Agreement.

STB: the Surface Transportation Board of the United States Department of Transportation.

Straddle Period: as defined in Section 7.1(f)(ii).

Subsidiaries: each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than fifty percent (50%) of the outstanding voting stock or other equity interests.

Tax: any federal, state, local or foreign income, alternative or add-on minimum accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, gross receipts, sales, use, value added, transfer, registration, utility, escheat, unclaimed property, communications, stamp, premium, excise, customs duties, severance, environmental (including taxes under Section 59A of the Code), real property, personal property, ad valorem, occupancy, license, occupation, employment, payroll, social security (or similar), disability, unemployment, workers' compensation, withholding, estimated or any other tax, duty, fee, assessment or other governmental charge or deficiencies thereof (including all interest and penalties thereon and additions thereto).

Tax Return: any return, report, declaration, form, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

Treasury Regulations: the regulations prescribed under the Code.

## **Section 12. Miscellaneous.**

### 12.1 Expenses.

(a) Sellers' Transaction Expenses. Except as otherwise provided in Section 7.1(c), Sellers shall bear their respective expenses, costs, and fees (including attorneys', financial advisers', investment bankers', auditors' and financing commitment fees) in connection with the transactions contemplated hereby, including the preparation, execution, and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

(b) Buyer's Transaction Expenses. Buyer shall bear its expenses, costs, and fees (including attorneys', financial advisers', investment bankers', auditors' and financing commitment fees) in connection with the transactions contemplated hereby, including the preparation, execution, and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

(c) Company Transaction Expenses. Except as otherwise provided in Section 7.1(c), Sellers shall bear all of the expenses, costs, and fees (including attorneys', financial advisers', investment bankers', auditors' and financing commitment fees) of the Company incurred, accrued or accruable, prior to Closing, in connection with the transactions contemplated hereby, including the preparation, execution, and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

12.2 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed by certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by telecopy or telegram, as follows:

(i) if to Buyer (or, after Closing, to the Company),

Scott G. Williams, President  
RailAmerica Transportation Corp.  
7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
(904) 538-6329 (Phone)  
(904) 538-6453 (Fax)

and

Georgi Kirov  
Chief Investment Officer  
RailAmerica Transportation Corp.  
7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
(904) 538-6364 (Phone)  
(904) 256-1499 (Fax)

with a copy to:

Cynthia A. Bergmann  
Freeborn & Peters LLP  
311 S. Wacker Drive, Suite 3000  
Chicago, IL 60606-6683  
(312) 360-6652 (Phone)  
(312) 360-6598 (Fax)

(ii) if to Sellers (or, prior to Closing, the Company),

Marquette Rail, LLC  
239 North Jebavy Drive  
Ludington, MI 49431  
214-912-3900 (Phone)  
469-362-2260 (Fax)  
Attention: Rick Cecil

with a copy to:

James E. Howard  
One Thompson Square  
Suite 201  
Charlestown, MA 02129

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery, on the day after such delivery, (x) if by certified or registered mail, on the seventh (7th) Business Day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered, (z) if by telecopy or telegram, on the next day following the day on which such telecopy or telegram was sent, provided that a copy is also sent by certified or registered mail.

### 12.3 Governing Law, etc.

(a) This agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal Laws of the State of Delaware, without giving effect to the conflict of laws rules thereof. Buyer, the Company and Sellers hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Michigan and the Federal courts of the United States of America located in the State of Michigan solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby and thereby. Each of Buyer, the Company and Sellers irrevocably agrees that all claims in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby and thereby, or with respect to any such action or proceeding, shall be heard and determined in such a Michigan or Federal

court, and that such jurisdiction of such courts with respect thereto shall be exclusive. Each of Buyer, the Company and Sellers hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document or in respect of any such transaction, that it is not subject to such jurisdiction. Each of Buyer, the Company and Sellers hereby waives, and agrees not to assert, to the maximum extent permitted by Law, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document or in respect of any such transaction, that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts. Buyer, the Company and Sellers hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.2 or in such other manner as may be permitted by Law, shall be valid and sufficient service thereof. The parties agree that in any action, suit or proceeding for the interpretation or enforcement hereof, the costs of the prevailing party (including reasonable attorneys' fees and costs) will be paid by the other party.

(b) The parties hereby agree that, in the event of any dispute (other than a dispute in respect of which provisions for resolution are otherwise set forth in this Agreement), they will meet and attempt to resolve such dispute within ten (10) days after a party gives a notice of dispute to one other party or parties. If for any reason they do not agree on a resolution, then each party will consider whether alternative dispute resolution (including, without limitation, arbitration) would be appropriate for the resolution of such dispute. Alternative dispute resolution shall be adopted only if all parties agree in writing, such decision to be made by each party in its sole discretion. This Section 12.3(b) shall not affect or be deemed to require any delay in the ability of any party to seek injunctive relief in respect of any dispute arising under this Agreement.

12.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

12.5 Assignment. This Agreement shall not be assignable or otherwise transferable by any party hereto without the prior written consent of the other parties hereto.

12.6 No Third Party Beneficiaries. Except as provided in Section 10 with respect to indemnification of Indemnified Parties hereunder, nothing in this Agreement shall confer any rights upon any Person or entity other than the parties hereto and their respective heirs, successors and permitted assigns.

12.7 Amendment; Waivers, etc. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this

Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. Except as otherwise provided in this Agreement, including without limitation as provided in Section 10, the rights and remedies of any party based upon, arising out of or otherwise in respect of any inaccuracy or breach of any representation, warranty, covenant or agreement or failure to fulfill any condition shall in no way be limited by the fact that the act, omission, occurrence or other state of facts upon which any claim of any such inaccuracy or breach is based may also be the subject matter of any other representation, warranty, covenant or agreement as to which there is no inaccuracy or breach.

12.8 Specific Performance. The parties to this Agreement acknowledge that it may be impossible to measure in money any damages that a party would incur if any term, covenant or condition contained in this Agreement were not performed in accordance with its terms and agree that each of the parties hereto shall be entitled to obtain an injunction to require specific performance of, and prevent any violation of the terms of, this Agreement, in addition to any other remedy hereunder. In any such action specifically to enforce any provision of this Agreement, each party hereby waives any claim or defense therein that an adequate remedy at law or in damages exists.

12.9 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

12.10 Confidentiality. From and after the date hereof, each party shall maintain in confidence, and each party shall cause its agents, Representatives and Affiliates to maintain in confidence, and no party shall use to the detriment or competitive disadvantage of another party or Affiliate, any information obtained in confidence from another party in connection with this Agreement or any of the transactions contemplated hereby, including without limitation information concerning the customers of the Company or concerning CSX Transportation, Inc. The foregoing covenants shall not apply (a) with respect to information that is already known to a party or to others not bound by a duty of confidentiality or such information that becomes publicly available through no fault of such party, (b) to the extent necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated by this Agreement, and (c) to the extent required under applicable Law, including reporting the transactions contemplated by this Agreement on Tax Returns and disclosure requirements under the Federal securities Laws and the rules and regulations issued thereunder. If the transactions contemplated by this Agreement are not consummated, each party shall return or destroy as much of confidential information received from the other as the other party may reasonably request.

12.11 Severability. If any provision, including any phrase, sentence, clause, section or subsection, of this Agreement is invalid, inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering such provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

12.12 Headings. The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

12.13 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

RAILAMERICA TRANSPORTATION CORP.

By:   
Name: SCOTT G. WILKOFF  
Title: President

MARQUETTE RAIL, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MARQUETTE RAIL CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FARMRAIL SYSTEM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANSPORTATION SOLUTIONS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RC RAIL INVESTMENTS LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

RAILAMERICA TRANSPORTATION CORP.

By: \_\_\_\_\_  
Name:  
Title:

MARQUETTE RAIL, LLC

By:   
Name: RICK Cecil  
Title: President

MARQUETTE RAIL CORP.

By:   
Name: RICK Cecil  
Title: President

FARMRAIL SYSTEM, INC.

By: \_\_\_\_\_  
Name:  
Title:

TRANSPORTATION SOLUTIONS, INC.

By: \_\_\_\_\_  
Name:  
Title:

RC RAIL INVESTMENTS LLC

By:   
Name: RICK Cecil  
Title: Member

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

**RAILAMERICA TRANSPORTATION CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**MARQUETTE RAIL, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**MARQUETTE RAIL CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**FARMRAIL SYSTEM, INC.**

By:   
Name: George C. Betke, Jr.  
Title: Chief Executive Officer

**TRANSPORTATION SOLUTIONS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**RC RAIL INVESTMENTS LLC**

By: \_\_\_\_\_  
Name:  
Title:

**PROGRESSIVE RAIL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

RAILAMERICA TRANSPORTATION CORP.

By: \_\_\_\_\_  
Name:  
Title:

MARQUETTE RAIL, LLC

By: \_\_\_\_\_  
Name:  
Title:

MARQUETTE RAIL CORP.

By: \_\_\_\_\_  
Name:  
Title:

FARMRAIL SYSTEM, INC.

By: \_\_\_\_\_  
Name:  
Title:

TRANSPORTATION SOLUTIONS, INC.

By:  \_\_\_\_\_  
Name: KEVIN E. RUBLE  
Title: PRESIDENT

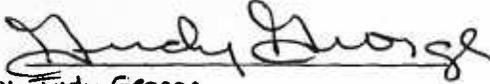
RC RAIL INVESTMENTS LLC

By: \_\_\_\_\_  
Name:  
Title:

PROGRESSIVE RAIL, INC.

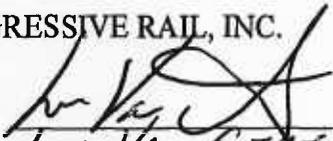
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JG-MQT-RR HOLDINGS, LLC

By:   
Name: Judy George  
Title: President

\_\_\_\_\_  
RICHARD W. JANY

PROGRESSIVE RAIL, INC.

By: 

Name: LOU VAN BEMERT

Title: CEO

JG-MQT-RR HOLDINGS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
RICHARD W. JANY

PROGRESSIVE RAIL, INC.

By: \_\_\_\_\_

Name:

Title:

JG-MQT-RR HOLDINGS, LLC

By: \_\_\_\_\_

Name:

Title:

  
\_\_\_\_\_  
RICHARD W. JANY

**DISCLOSURE SCHEDULES TO  
PURCHASE AND SALE AGREEMENT  
BY AND AMONG  
MARQUETTE RAIL, LLC,  
MEMBERS OF MARQUETTE RAIL, LLC  
AND  
RAILAMERICA TRANSPORTATION CORP.  
DATED JANUARY 31, 2012**

**Schedule 1.1(b)**

**Percentage Allocation for Purchase Price Payment**

| <b>Marquette Rail Members</b>  | <b>Allocation</b> |
|--------------------------------|-------------------|
| Marquette Rail Corp.           | 60%               |
| Farmrail System, Inc.          | 12%               |
| Transportation Solutions, Inc. | 10%               |
| RC Rail Investments, LLC       | 9%                |
| Progressive Rail, Inc.         | 4%                |
| JG-MQT-RR Holdings, LLC        | 4%                |
| Richard W. Jany                | 1%                |

**Schedule 1.1 (c)**

**Allocation Schedule for Escrow Distributions**

| <b>Marquette Rail Members</b>  | <b>Allocation</b> |
|--------------------------------|-------------------|
| Marquette Rail Corp.           | 60%               |
| Farmrail System, Inc.          | 12%               |
| Transportation Solutions, Inc. | 10%               |
| RC Rail Investments, LLC       | 9%                |
| Progressive Rail, Inc.         | 4%                |
| JG-MQT-RR Holdings, LLC        | 4%                |
| Richard W. Jany                | 1%                |

**SCHEDULE 1.4a – REDACTED**

**Schedule 2.1**

**Ownership Interest of Sellers**

| <b>Marquette Rail Members</b>  | <b>Percentage</b> |
|--------------------------------|-------------------|
| Marquette Rail Corp.           | 60%               |
| Farmrail System, Inc.          | 12%               |
| Transportation Solutions, Inc. | 10%               |
| RC Rail Investments, LLC       | 9%                |
| Progressive Rail, Inc.         | 4%                |
| JG-MQT-RR Holdings, LLC        | 4%                |
| Richard W. Jany                | 1%                |

**Schedule 2.3**

**Company Interests**

| <b>Marquette Rail Members</b>  | <b>Percentage</b> |
|--------------------------------|-------------------|
| Marquette Rail Corp.           | 60%               |
| Farmrail System, Inc.          | 12%               |
| Transportation Solutions, Inc. | 10%               |
| RC Rail Investments, LLC       | 9%                |
| Progressive Rail, Inc.         | 4%                |
| JG-MQT-RR Holdings, LLC        | 4%                |
| Richard W. Jany                | 1%                |

See attached Marquette Rail, LLC Operating Agreement.

Each Seller and the Company has waived its rights with respect to Article VI of the Marquette Rail, LLC Operating Agreement pursuant to the Mutual Waiver of Certain Rights, dated January 27, 2012, by and among the Sellers and the Company.

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**MARQUETTE RAIL, LLC**

**GOLLATZ, GRIFFIN & EWING, P.C.**

**ATTORNEYS AT LAW**

**1700 West 14th Street**

**Wilmington, Delaware 19806**

**Telephone: (302) 655-8181**

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Exhibit A:  
LIST OF MEMBERS, CAPITAL, AND PERCENTAGES

Exhibit B:  
PROMISSORY NOTE

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
MARQUETTE RAIL, LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT is made effective this 3<sup>rd</sup> day of November, 2005, by and between Transportation Solutions, Inc., Farmrail System, Inc., Progressive Rail Incorporated, Huron Leasing Corp., Rick Jany and Rick Cecil, as the initial Class A Members, and Marquette Rail Corporation, as the initial Class B Member, and shall further be binding upon such other Persons that shall subsequently become a Member or an Interest Holder.

**BACKGROUND**

The parties have agreed to form and operate a limited liability company under the Delaware Limited Liability Company Act, 6 *Del. C.* §18-101 *et seq.*, in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties hereto, intending to be legally bound, hereby agree as follows:

**Article I  
DEFINED TERMS**

The following terms as used throughout this Agreement shall have the meanings specified in this *Article I*. Other terms are defined in the text of this Agreement and, except as provided otherwise therein, throughout this Agreement those terms shall have the meanings respectively ascribed to them.

"*Act*" means the Delaware Limited Liability Company Act, 6 *Del.C.* § 18-101 *et seq.*, as amended from time to time.

"*Adjusted Capital Balance*" means, as of any particular day, an Interest Holder's total Capital Contribution less all amounts actually distributed to the Interest Holder pursuant to *Section 4.2* hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

"*Adverse Legal Proceedings*" means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;

(iii) the Member is adjudicated bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;

(iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties;

(vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in clauses (i) through (v) above;

(vii) within one hundred twenty days (120) days of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation if the proceeding has not been dismissed, or within ninety (90) days after the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed, or if the appointment is stayed, for ninety (90) days after the expiration of the stay which period the appointment is not vacated; or

(viii) any one or more of the Member's Membership Rights are subject to a charging order or otherwise attached.

*"Affiliate"* means, with respect to any Member, any Person: (i) which owns more than fifty percent (50%) of the voting interests in the Member; or (ii) in which the Member owns more than fifty percent (50%) of the voting interests; or (iii) in which more than fifty percent (50%) of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

*"Agreement"* means this Limited Liability Company Agreement, as amended from time to time.

*"Capital Account"* means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

(i) an Interest Holder's Capital Account shall be credited with the Interest Holder's Capital Contribution, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of *Article IV*; and

(ii) an Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company or which are secured by property contributed by the Interest Holder to the Company (to the extent such liabilities are not otherwise taken into account in the calculation of such Interest Holder's Capital Contribution), the Interest Holder's distributive share of Loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of *Article IV*.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account relates to the Interest transferred.

*"Capital Contribution"* means the total amount of cash and the fair market value of any other in-kind contributions or property contributed (or deemed contributed under the Code) to the Company by a Member, net of liabilities assumed or to which the property is subject. Unless specified otherwise in this Agreement, all Capital Contributions made by Members to the Company shall be made in the form of cash. No Capital Contribution shall be made by a Member to the Company in property other than cash, unless specifically agreed to in writing between the contributing Member and the Managers, which writing shall: (i) identify the in-kind contributions or property to be contributed; (ii) state the fair market value of the in-kind contributions or property on the date of contribution; (iii) state the amount and nature of all liabilities secured by any property contributed and the extent, if any, to which the Company shall assume or take subject to any of those liabilities; and (iv) state the adjusted basis of any property contributed for federal income tax purposes in the hands of the contributing Member immediately prior to its contribution.

*"Capital Proceeds"* means the gross receipts received by the Company from a Capital Transaction.

*"Capital Transaction"* means any transaction other than in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property, financing, refinancing, condemnations, recoveries of damage awards and insurance proceeds. For the purposes of this Agreement, receipt of cash or other consideration that is used to repair or replace Company Assets shall be considered in the ordinary course of business.

*"Cash Flow"* means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Managers. Cash Flow shall be increased by the reduction of any reserve previously established.

*"Certificate of Formation"* means the certificate of formation of the Company filed with the Office of the Delaware Secretary of State in accordance with the Act.

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"Company" means the limited liability company formed in accordance with this Agreement.

"Company Assets" means such real or personal property owned by the Company, or to which the Company possesses any other legal or equitable interest or rights, as of the date of this Agreement, and such additional real or personal property, tangible or intangible, as the Company may acquire from time to time, including without limitation the rail lines extending from Grand Rapids to Ludington and Manistee, Michigan, known as the "Ludington Branch" being leased from CSX Transportation, Inc., and the equipment and other property to used to operate the Ludington Branch .

"Interest" means an Interest Holder's share of the Profits and Losses of, and the right to receive distributions from, the Company.

"Interest Holder" means any Person who holds an Interest, whether as a Member or an assignee of a Member who has not been admitted to the Company as a Member. When pertinent, an Interest Holder whose rights are associated with a Class A Member shall be referred to as a "Class A Interest Holder" and an Interest Holder whose rights are associated with a Class B Member shall be referred to as a "Class B Interest Holder."

"Involuntary Withdrawal" means, with respect to any Member (hereafter, together with any successor in interest to such Member, the "Withdrawn Member"), unless the Members unanimously consent otherwise, the occurrence of any of the following events:

(i) if the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(ii) if the Member is an individual and an employee of the Company, the termination of the Member's employment with the Company;

(iii) if the Member is a trust, the distribution by the trustee thereof of the trust's entire Interest;

(iv) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(v) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(vi) if the Member is an estate, the distribution by the fiduciary thereof of the estate's entire Interest.

*"Manager"* is the Person or each of the Persons designated as such in this Agreement. In the event that more than one (1) Person is designated and serving as Manager: (i) such Persons shall collectively be referred to as *"Managers"*; (ii) unless specified elsewhere in this Agreement, the actions of the Managers shall be decided by a majority vote in number (or by written instrument indicating unanimous consent) of such Persons then designated as Managers; (iii) if there is a deadlock among such Persons then designated as Managers, such deadlock shall be decided by vote of all of the Members, including such Persons designated as Managers who are Members, and, except as otherwise set forth in this Agreement, the decision of the Members holding a majority of the Percentages then held by the Members shall determine the actions of the Managers with regard to the issue which created such deadlock; and (iv) no single Manager shall have the authority to act as Manager, unless such act has been approved as hereinbefore provided. If at any time there is only one (1) individual designated and serving as Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Agreement, and all references to *"Managers"* shall be deemed to refer to such single Manager.

*"Member"* means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company in accordance with the terms of this Agreement. Each Member, together with the Membership Rights associated with such Member, shall be designated as either a *"Class A Member"* or a *"Class B Member,"* with the specific rights, powers, privileges, limitations and restrictions applicable to each such designation as provided in this Agreement. To the extent that this Agreement does not set forth a particular distinction between Class A Members and Class B Members, each Class A Member and each Class B Member, together with the Membership Rights associated with such Member, shall have the rights, powers, privileges, limitations and restrictions of a Member under this Agreement and the Act, and shall be referred to in this Agreement as a Member. Nothing herein shall preclude one Person from being separately designated as a Class A Member and a Class B Member at the same time for distinct Percentages attributed to such Member. If at any time there is only one Member of a Class, such Member shall be entitled to exercise all of the powers of that Class of Members set forth in this Agreement, and all references to *"Members"* of that Class shall be deemed to refer to such single Member.

*"Membership Rights"* means all of the rights of a Member in the Company pursuant to the Act or as otherwise provided in this Agreement including, without limitation, a Member's: (i) Interest; (ii) right to inspect the Company's books and records; and (iii) right to participate in the management of and vote on matters coming before the Company.

*"Negative Capital Account"* means a Capital Account with a balance of less than zero.

*"Net Taxable Income"* shall be calculated as the Profit without taking into account the adjustments set forth in (i) through (iv) of the definition of *"Profit"* set forth in this Agreement.

*"Percentage"* means, as to a Member, the percentage set forth after the Member's name on Exhibit A of this Agreement, as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member's Interest that has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member's Interest. When pertinent, a *"Class*

*A Percentage*” means, as to a Class A Member or a Class A Interest Holder, the Percentage of such Class A Member or Class A Interest Holder at such relevant time divided by the Percentages of all Class A Members and Class A Interest Holders who have succeeded to a Class A Member; and a *“Class B Percentage”* means, as to a Class B Member or a Class B Interest Holder, the Percentage of such Class B Member or Class B Interest Holder at such relevant time divided by the Percentages of all Class B Members and Class B Interest Holders who have succeeded to a Class B Member.

*“Person”* means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

*“Positive Capital Account”* means a Capital Account with a balance greater than zero.

*“Profit”* and *“Loss”* means, for each taxable year of the Company (or other period for which Profit or Loss must be computed) the net income or net loss of the Company determined in accordance with Code Section 703(a), including any items that are separately stated for purposes of Code Section 702(a), as determined in accordance with U.S. federal income tax accounting principles with the following adjustments:

(i) any income of the Company that is exempt from U.S. federal income tax shall be included as income;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treas. Reg. §1.704-1(b)(2)(iv)(i) shall be treated as current expenses;

(iii) any item of income, gain, loss or deduction specially allocated pursuant to this Agreement shall be excluded from the determination of Profit and Loss; and

(iv) without giving effect to any adjustments made pursuant to Code Sections 734 or 743.

*“Regulation”* means the income tax regulations, including any proposed or temporary regulations, from time to time promulgated under the Code, and is sometimes referred to herein as *“Treas. Reg.”*

*“Transfer”* means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, gift, devise (whether by intestacy or other disposition) or other transfer, and, when used as a verb, means, voluntarily to sell, hypothecate, pledge, assign, gift, devise (whether by intestacy or other disposition) or otherwise transfer.

*“Voluntary Withdrawal”* means a Member’s dissociation with the Company by means other than by a Transfer in compliance with this Agreement or resulting from Adverse Legal Proceedings or an Involuntary Withdrawal.

## Article II FORMATION AND MEMBERS

2.1. ORGANIZATION. By execution of this Agreement, the Members ratify and confirm the execution and filing by Kevin E. Ruble, as their duly authorized agent, of a Certificate of Formation with the Office of the Secretary of State of the State of Delaware, for the purpose of organizing the Company as a limited liability company pursuant to the Act. The Company was organized on July 20, 2005, and has been operating as a single member limited liability company under the Act.

2.2. NAME OF THE COMPANY. The name of the Company shall be "Marquette Rail, LLC." The Company may do business under that name and under any other name or names which the Managers select. If the Company does business under a name other than that set forth in its Certificate of Formation, then the Company shall file a fictitious name certificate or any other documents as required by applicable law.

2.3. PURPOSE. The Company is organized to purchase, acquire, buy, sell, own, trade in, hold, develop, lease, manage, subdivide and otherwise deal in and with the Company Assets and to do any and all things necessary, convenient, or incidental to that purpose, including to operate the Ludington Branch as a common carrier railroad, as well as engage in any other lawful activity approved by the Members for which a limited liability company may be formed under Delaware law.

2.4. TERM. The term of the Company shall begin upon the filing of the Certificate of Formation with the office of the Secretary of State of the State of Delaware and shall be perpetual, unless its existence is sooner terminated pursuant to *Article VII* of this Agreement.

2.5. REGISTERED OFFICE. The registered office of the Company in the State of Delaware shall be located at 1700 West 14<sup>th</sup> Street, New Castle County, Wilmington, DE 19806, or at any other place within the State of Delaware which the Managers shall select. The principal office of the Company shall be at any location which the Managers shall select.

2.6. REGISTERED AGENT. The name of the Company's registered agent in the State of Delaware shall be Bruce W. Tigani, Esq.

2.7. MEMBERS. The name, present mailing address, social security or taxpayer identification number, designation as a Class A Member or a Class B Member, and Percentage of each Member are set forth on *Exhibit A* attached hereto. Each of the Members represents and warrants to each of the other Members and the Company that the Membership Rights being acquired by such Member are being purchased for such Member's own account and not with a view to, or for sale in connection with, any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"). Such Member understands that such Membership Rights have not been registered under the Securities Act or any state securities laws by reason of their contemplated issuance in transactions exempt from the registration and prospectus delivery requirements thereof, and that the reliance of the Company and others upon such

exemptions is predicated in part by the representations and warranties of such Member contained herein.

### **Article III CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS**

3.1. INITIAL CAPITAL CONTRIBUTIONS. Upon the execution of this Agreement, each of the Members shall contribute to the Company the property, in-kind contributions and/or amounts respectively set forth on *Exhibit A* in exchange for their respective Percentage. The Members agree that the fair market value of any property or in-kind contributions contributed is as set forth on *Exhibit A*.

3.2. NO ADDITIONAL CAPITAL CONTRIBUTIONS REQUIRED. No Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company in excess of his, her, or its requisite Capital Contribution.

3.3. NO INTEREST ON CAPITAL CONTRIBUTIONS. Interest Holders shall not be paid interest on their Capital Contributions.

3.4. RETURN OF CAPITAL CONTRIBUTIONS. Except as otherwise provided in this Agreement, no Interest Holder shall have the right to the return of any Capital Contribution.

3.5. CAPITAL ACCOUNTS. A separate Capital Account shall be maintained for each Interest Holder.

3.6. LOANS. Any Member or Manager may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and such Member or Manager shall agree.

### **Article IV PROFIT, LOSS, AND DISTRIBUTIONS**

#### 4.1. DISTRIBUTION OF CASH FLOW AND ALLOCATION OF PROFIT OR LOSS.

4.1.1. Profit or Loss. After giving effect to the special allocations set forth in *Section 4.3*, for each taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which shall be allocated in accordance with the provisions of *Sections 4.2.1* and *4.2.2*) shall be allocated to the Interest Holders in proportion to their Percentages.

4.1.2. Cash Flow. Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders as follows:

4.1.2.1. First, to all Interest Holders, no later than the later of (a) seventy-five (75) days after the end of the taxable year, or (b) ten (10) days after the Form K-1s have been issued, in an amount equal to forty (40%) of the Net Taxable Income allocated to such Interest Holder on the Form K-1 issued to such Interest Holder for the taxable year; and

4.1.2.2. Second, at such times and in such amounts as may be approved by the majority of Percentages of each Class of Members, to all Interest Holders, no later than seventy-five (75) days after the end of the taxable year, in proportion to their respective Percentages.

**4.2. DISTRIBUTION OF CAPITAL PROCEEDS AND ALLOCATION OF PROFIT OR LOSS FROM CAPITAL TRANSACTIONS.**

4.2.1. Profit. After giving effect to the special allocations set forth in *Section 4.3*, Profit from a Capital Transaction shall be allocated as follows:

4.2.1.1. If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all such Negative Capital Accounts have been reduced to zero.

4.2.1.2. Any Profit not allocated pursuant to *Section 4.2.1.1* shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts distributable to them pursuant to *Sections 4.2.3.4.1* and *4.2.3.4.3*.

4.2.1.3. Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.2. Loss. After giving effect to the special allocations set forth in *Section 4.3*, Loss from a Capital Transaction shall be allocated as follows:

4.2.2.1. If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all such Positive Capital Accounts have been reduced to zero.

4.2.2.2. Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to *Section 4.2.2.1* shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.3. Capital Proceeds. Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

4.2.3.1. to the payment of all expenses of the Company incident to the Capital Transaction;

4.2.3.2. to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder);

4.2.3.3. to the establishment of any reserves which the Managers deem necessary for liabilities or obligations of the Company; then

4.2.3.4. the balance shall be distributed as follows:

4.2.3.4.1. to the Interest Holders in proportion to their Adjusted Capital Balances, until their respective remaining Adjusted Capital Balances have been reduced to zero;

4.2.3.4.2. if one or more Interest Holders has a Positive Capital Account after the distributions made pursuant to *Section 4.2.3.4.1* and before any further allocation of Profit pursuant to *Section 4.2.1.3*, to those Interest Holders in proportion to their Positive Capital Accounts, until all such Positive Capital Accounts have been reduced to zero;

4.2.3.4.3. the balance, to the Interest Holders in proportion to their Percentages.

4.3. SPECIAL ALLOCATIONS. The Capital Accounts of each Interest Holder shall be maintained in accordance with the Code and the Regulations, including without limitation, the alternative test for economic effect set forth in Treas. Reg. §1.704-1(b)(2)(ii)(d) and the minimum gain chargeback provisions of Treas. Reg. §1.704-2. Nothing in this Agreement is intended to create a deficit restoration obligation or otherwise impose personal liability on an Interest Holder for a deficit in such Interest Holder's Capital Account. Without limiting the generality of the foregoing:

4.3.1. Economic Effect. If an allocation of Loss or other allocation pursuant to *Sections 4.1* or *4.2*, including without limitation, expenditures described in Code Section 705(a)(2)(B), would cause or increase a deficit in an Interest Holder's Capital Account as defined in Treas. Reg. §1.704-1(b)(2)(ii)(d) and Treas. Reg. §1.704-2, then the amount of the Loss or other allocation which would have otherwise caused or increased the deficit in such Interest Holder's Capital Account shall instead be allocated to the Capital Accounts of the other Interest Holders which would not have a deficit in their Capital Accounts as a result of the allocation, in proportion to their Percentages, or, if no such Interest Holders exist, then to the Interest Holders in proportion to their Percentages. This *Section* is intended to comply with the alternative test for economic effect set forth in Treas. Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted and applied consistent therewith.

4.3.2. Qualified Income Offset. If any Interest Holder unexpectedly receives an adjustment, allocation, or distribution described in Treas. Reg. §1.704-1(b)(2)(ii)(d)(4), (5), or (6), which creates or increases a deficit in such Interest Holder's Capital Account, then items of Company income and gain for such taxable year and, if necessary, for subsequent taxable years shall be specially credited to the Capital Account of the Interest Holder in an amount and manner

sufficient to eliminate, to the extent required by the Regulations, the deficit in the Capital Account as quickly as possible. Any such allocations shall consist of a pro rata portion of each item of income, including gross income, and gain for each such taxable year. This *Section* is intended to constitute a “qualified income offset” as set forth in Treas. Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted and applied consistent therewith.

4.3.3. Nonrecourse Deductions. Nonrecourse deductions (as determined in accordance with Treas. Reg. §1.704-2(c)) shall be separately allocated to and among the Interest Holders in proportion to their Percentages; provided, however, that items of Company Loss, deductions, or Code Section 705(a)(2)(B) expenditures that are characterized as “partner nonrecourse deductions” under Treas. Reg. §1.704-2(i) shall be allocated to the Interest Holders in accordance with said Treas. Reg. §1.704-2(i).

4.3.4. Minimum Gain Chargeback. Notwithstanding anything to the contrary contained in this *Section* 4.3, if there is a net decrease in the Company’s minimum gain (as determined in accordance with Treas. Reg. §1.704-2(d)) during a taxable year of the Company, each Interest Holder shall be specially allocated items of Company income, including gross income, and gain for such taxable year and, if necessary, for subsequent taxable years, in an amount equal to that Interest Holder’s share of the net decrease in Company minimum gain for such taxable year, as determined in accordance with Treas. Reg. §1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treas. Reg. §1.704-2(f)(6). This *Section* is intended to comply with the minimum gain chargeback provisions of Treas. Reg. §1.704-2(f) and shall be interpreted and applied consistent therewith. In any taxable year that the Company has a net decrease in the Company’s minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Interest Holders and it is not expected that the Company will have sufficient other income to correct that distortion, the Managers may, in their discretion (and shall, if requested by any Member), seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Treas. Reg. §1.704-2(f)(4).

4.3.5. “Partner” Minimum Gain Chargeback. Notwithstanding anything to the contrary contained in this *Section* 4.3, but subject to the provisions of *Section* 4.3.4., if during a taxable year of the Company, there is a net decrease in “partner nonrecourse debt minimum gain,” characterized as such under Treas. Reg. §1.704-2(i)(2), each Interest Holder with a share of such partner nonrecourse debt minimum gain (determined in accordance with Treas. Reg. §1.704-2(i)(5)) as of the beginning of such taxable year shall be specially allocated items of Company income, including gross income, and gain for such taxable year and, if necessary, for subsequent taxable years, in an amount equal to such Interest Holder’s share of the net decrease in partner nonrecourse debt minimum gain for such taxable year, as determined in a manner consistent with the provisions of Treas. Reg. §1.704-2(g)(2). The items to be so allocated shall be determined in a manner consistent with the provisions of Treas. Reg. §1.704-2(f)(6). This *Section* is intended to comply with the partner minimum gain chargeback provisions of Treas. Reg. §1.704-2(i) and shall be interpreted and applied consistent therewith. In any taxable year that there is a net decrease in partner nonrecourse debt minimum gain, if the partner minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Interest Holders and it is not expected that the

Company will have sufficient other income to correct that distortion, the Managers may, in their discretion (and shall, if requested by any Member), seek to have the Internal Revenue Service waive the partner minimum gain chargeback requirement in a manner consistent with the provisions of Treas. Reg. §1.704-2(f)(4).

4.3.6. Facilitation of Economic Arrangement. Any special allocations pursuant to this *Section* 4.3 shall be taken into account in computing subsequent allocations of Profit, Loss, and any other item allocated pursuant to this *Article* IV, so that the net amount of any items specially allocated and the Profit, Loss, and any other item allocated to each Interest Holder pursuant to this *Article* IV shall, to the extent possible, be equal to the net amount that would have been allocated to each Interest Holder pursuant to the provisions of this *Article* IV if such special allocations had not occurred.

#### 4.4. LIQUIDATION AND DISSOLUTION.

4.4.1. General. If the Company is liquidated, the Company Assets shall be distributed to the Interest Holders in proportion to their respective Positive Capital Account balances, after taking into account the allocations of Profit or Loss pursuant to *Sections* 4.1 or 4.2, distributions of cash or property pursuant to *Sections* 4.1, and the special allocation provisions of *Section* 4.3, until the distributions equal the total of all Positive Capital Account balances, and then to Interest Holders in accordance with their Percentages.

4.4.2. Negative Capital Accounts. No Interest Holder shall be obligated to restore a Negative Capital Account.

#### 4.5. GENERAL.

4.5.1. Determination of Distributions. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Managers.

4.5.2. Distributions in Kind. The Company Assets may be distributed in kind to the Interest Holders, and those assets shall be valued on the basis of their fair market value. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Managers. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in *Section* 4.2 and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to *Section* 4.4.

4.5.3. Record Date for Allocations and Distributions. All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the

basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss or proceeds attributable to a Capital Transaction or to any other extraordinary non-recurring items of the Company.

4.5.4. Managers Authority for Code §704(b) Compliance. The Managers are hereby authorized, upon the advice of the Company's tax counsel, to amend this *Article IV* to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder's prior written consent.

4.5.5. Code §704(c) Income Tax Compliance. In accordance with Code Section 704(c) and the Regulations promulgated thereunder, items of income, gain, loss and deduction with respect to any property contributed to the Company shall, solely for federal, state and local income tax purposes (and not for Capital Account purposes), be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of such property to the Company for such tax purposes and the value ascribed to it under this Agreement.

## **Article V**

### **MANAGEMENT: RIGHTS, POWERS, AND DUTIES**

#### 5.1. MANAGEMENT.

5.1.1. Managers. The Company shall be managed by the Managers, who each may, but need not, be a Member. Each Member shall have the right to appoint one Manager. The following individuals are hereby collectively designated to serve as the initial Managers by the respective Member indicated: Kevin E. Ruble (Transportation Solutions, Inc.), George C. Betke, Jr. (Farmrail System, Inc.), Rick Cecil (Rick Cecil), Rick Jany (Rick Jany), Jamees George (Huron Leasing Corp.), Tim Eklund (Progressive Rail Incorporated.), and Duane Tolander (Marquette Rail Corporation). In the event of the death, incapacity, resignation, refusal or other failure of any one or more of the foregoing to act as Manager hereunder, the Member which appointed the Manager shall appoint a successor Manager. The appointment of any successor Manager shall be subject to the consent of the Class B Members, which consent shall not be unreasonably withheld or delayed. Notwithstanding any vacancy, the remaining Manager(s) shall continue to act as such.

5.1.2. General Powers. The Managers shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company, whether in the ordinary course of business or otherwise, for the purposes herein stated, and to make all decisions affecting such business and affairs, including without limitation, for Company purposes, the power to:

5.1.2.1. acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

5.1.2.2. construct, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage, or lease any of the Company Assets;

5.1.2.3. enter into agreements and contracts in connection with the Company's business;

5.1.2.4. purchase liability and other insurance to protect the Company's properties and business;

5.1.2.5. borrow money for and on behalf of the Company, and execute any guaranty on behalf of a third party;

5.1.2.6. execute or modify agreements or contracts with respect to any part or all of the Company's Assets;

5.1.2.7. prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any Company Asset and, in connection therewith, to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;

5.1.2.8. execute any and all other instruments and documents which may be necessary or in the opinion of the Managers desirable to carry out the intent and purpose of this Agreement;

5.1.2.9. make any and all expenditures which the Managers, in their sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting, and other related expenses incurred in connection with the organization, financing, and operation of the Company;

5.1.2.10. enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company;

5.1.2.11. invest and reinvest Company reserves in short term instruments or money market funds; and

5.1.2.12. adjust, compromise, settle or refer to arbitration any claim against or in favor of the Company and to institute, prosecute or defend any legal proceedings relating to the Company Assets and the business of the Company.

5.1.3. Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, the Managers shall not undertake any of the following without the approval of the majority of Percentages of each Class of Members:

the officers and agents appointed by the Managers hereunder shall be fixed from time to time by the Managers. The initial officers of the Company shall be: (a) Kevin E. Ruble, President and Chief Executive Officer, (b) Rick Jany, Vice President and General Manager, and (c) Judy A. Petry, Controller.

5.1.7. Meetings of Managers. Managers shall meet quarterly at such times as may be established by the President, or if no President has been appointed, by the majority of Managers. A special meeting of the Managers may be called at any time by three Managers. Meetings of Managers shall be held at the Company's principal place of business or at any other place designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Manager. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Manager who is entitled to notice waives notice if before or after the meeting, the Manager signs a waiver of the notice which is filed with the records of Managers' meetings, or if such Manager is present at the meeting. At a meeting of Managers, the presence of a majority of the Managers shall constitute a quorum. Managers may participate in meetings by means of conference telephone; provided that the Managers shall attempt to have at least one quarterly meeting per year at which all Managers can attend in person.

5.1.8. Consent in Lieu of Meeting. In lieu of holding a meeting, the Managers may vote or otherwise take action by a written instrument indicating unanimous consent of the Managers.

## 5.2. MEETINGS OF AND VOTING BY MEMBERS.

5.2.1. Meetings of Members. A meeting of the Members may be called at any time by the Managers or by those Members holding a majority of the Percentages then held by either Class A or Class B Members. Meetings of Members shall be held at the Company's principal place of business or at any other place designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting, the Member signs a waiver of the notice which is filed with the records of Members' meetings, or if such Member is present at the meeting in person or by proxy. At a meeting of Members, the presence in person or by proxy of Members holding not less than a majority of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by his duly authorized attorney in fact.

5.2.2. Voting by Members. Except as otherwise provided in this Agreement, wherever this Agreement requires the approval or other action of the Members, the affirmative vote of the Members holding a majority or more of the Percentages then held by Members shall be required to approve or otherwise act on the matter.

5.2.3. Consent in Lieu of Meeting. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating unanimous consent of the Members.

5.3. PERSONAL SERVICES.

5.3.1. Services by Members. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Managers, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

5.3.2. Compensation of Managers. Unless approved by Members holding a majority of the Percentages of each Class, the Managers shall not be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Managers shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

5.4. DUTIES OF PARTIES.

5.4.1. Managers. The Managers shall devote such time to the business and affairs of the Company as is necessary to carry out the Managers' duties set forth in this Agreement.

5.4.2. Engagement in other Business or Activities. Except as otherwise expressly provided in *Section 5.4.3*, nothing in this Agreement shall be deemed to restrict in any way the rights of any Manager or Member, or of any Affiliate of any Manager or Member, to conduct any other business or activity whatsoever, and any Manager or Member shall not be accountable to the Company or to any Member with respect to that business or activity even if the business or activity competes with the Company's business, so long as the business or activity does not involve the acquisition or operation of rail lines that connect with the rail lines to be operated by the Company. The organization of the Company shall be without prejudice to their respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any Manager or any other Member or the Manager's or Member's Affiliates.

5.4.3. Dealings with Members and Affiliates.

5.4.3.1. Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members, the Managers and their respective Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms as determined by the Managers.

5.4.3.2. To the extent not paid directly by the Company to the lender as co-borrower or guarantor, the Company shall make monthly distributions to each Class B Interest Holders, in an amount sufficient for such Class B Members to pay the principal and interest due on

loans incurred by the Class B Members in connection with its initial capitalization and its purchase of interests Interest in the Company. Such distributions shall be considered as advances on the distributions to be made to the Class B Interest Holders under *Section 4.1.2*. To the extent the distributions under this section exceed the annual distributions under *Section 4.1.2*, the difference shall be considered a loan to the Class B Interest Holders that shall be repayable, with interest at the minimum required Federal rate, from future distributions under *Section 4.1.2* in such years when the *Section 4.1.2* distributions exceed the distributions under this *Section*.

#### 5.5. LIABILITY AND INDEMNIFICATION.

5.5.1. Limitation of Liability of Managers and Officers. No Manager or officer of the Company shall be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by such Manager or officer within the scope of the authority conferred on the Managers or officers by this Agreement, except for fraud, gross negligence, willful misconduct, or an intentional breach of this Agreement.

5.5.2. Indemnification of Managers and Officers. The Company shall indemnify each Manager and officer for any act performed by such Manager or officer within the scope of the authority conferred on the Manager or officer by this Agreement, except for fraud, gross negligence, willful misconduct or an intentional breach of this Agreement.

#### 5.6. POWER OF ATTORNEY.

5.6.1. Grant of Power. Each Member constitutes and appoints the Managers as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

5.6.1.1. all documents (including amendments to the Certificate of Formation) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;

5.6.1.2. any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Delaware or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Delaware;

5.6.1.3. one or more fictitious or trade name certificates; and

5.6.1.4. all documents which may be required to dissolve and terminate the Company and to cancel its Certificate of Formation.

5.6.2. Irrevocability. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member and be binding on such Member's heirs. It also shall survive the Transfer of an Interest,

except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

**Article VI**  
**TRANSFER OF INTERESTS AND WITHDRAWAL OF MEMBERS**

6.1. TRANSFERS.

6.1.1. Conditions of Transfer. No Person may Transfer all or any portion of, or any interest or rights in, the Person's Membership Rights or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

6.1.1.1. the Transfer will not require registration of Interests or Membership Rights under any federal or state securities laws;

6.1.1.2. the transferee delivers to the Company a written instrument agreeing to be bound by the terms of this Agreement.

6.1.1.3. the Transfer will not result in the termination of the Company pursuant to Code Section 708;

6.1.1.4. the Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

6.1.1.5. the transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number and (ii) the transferee's initial tax basis in the Transferred Interest;

6.1.1.6. the transferor complies with the provisions set forth in *Section 6.1.4* or *Section 6.1.6*; and

6.1.1.7. the Transfer will not result in the Company being taxed as a corporation for purposes of federal or state income tax.

6.1.2. Transfer of Interest. If the Conditions of Transfer are satisfied, then a Member or Interest Holder may Transfer all or any portion of that Person's Interest pursuant to the provisions applicable to such Transfer as set forth in this *Section 6.1*. The Transfer of an Interest pursuant to this *Section 6.1* shall not result, however, in the Transfer of any of the transferor's other Membership Rights, if any, and the transferee of the Interest shall have no right to: (i) become a Member without

the consent of the Members required by this Agreement; or (ii) exercise any Membership Rights other than those specifically pertaining to the ownership of an Interest.

6.1.3. Transfers in Violation. Each Member and Interest Holder hereby acknowledges the reasonableness of the provisions contained in this *Section* 6.1 in view of the purposes of the Company and the relationship of the Members and Interest Holders. The Transfer of any Membership Rights or Interests in violation of the provisions contained in this *Section* 6.1 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Rights or Interests are attempted to be transferred in violation of this *Section* shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company or have any other rights in or with respect to the Membership Rights or Interests.

6.1.4. Right of First Refusal.

6.1.4.1. If an Interest Holder (the "Transferor") receives a bona fide written offer (the "Transferee Offer") from any other Person (the "Transferee") to purchase all or any portion of, or any interest or rights in, the Transferor's Interest or the Transferor's Membership Rights, as the case may be (the "Transferor Interest"), then, prior to any Transfer of the Transferor Interest, the Transferor shall give the Company written notice (the "Transfer Notice") containing each of the following:

6.1.4.1.1. the Transferee's identity;

6.1.4.1.2. a true and complete copy of the Transferee Offer; and

6.1.4.1.3. the Transferor's offer (the "Purchase Option") to sell the Transferor Interest to the Company for a total price equal to the lower of (a) the price set forth in the Transferee Offer in equivalent United States dollars (the "Transfer Purchase Price"), which shall be payable on the terms of payment set forth in the Transferee Offer, or (b) the Option Purchase Price as set forth in *Section* 6.5, which shall be payable on the terms of payment set forth in *Section* 6.5.

6.1.4.2. The Purchase Option shall be and remain irrevocable for a period (the "Purchase Option Period") ending at 11:59 P.M. local time at the Company's principal office on the thirtieth (30th) day following the date the Transfer Notice is given to the Company.

6.1.4.3. At any time during the Purchase Option Period, the Company may elect to exercise the Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of voting on whether the Company shall elect to exercise the Purchase Option.

6.1.4.4. If the Company elects to exercise the Purchase Option, the Company's notice of its election shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be less than ten (10) days after the date of the Company's notice of election

or more than sixty (60) days after the expiration of the Purchase Option Period, and the Transfer Purchase Price shall be paid on the Transfer Closing Date in accordance with the payment terms set forth in the Transferee Offer.

6.1.4.5. If the Company fails to exercise the Purchase Option, the Transferor shall be permitted for a period (the "Free Transfer Period") of ninety (90) days after the expiration of the Purchase Option Period to Transfer the Transferor Interest to the Transferee, for the same price and on the same terms and conditions as set forth in the Transfer Notice. The Transfer shall be otherwise subject, however, to the Conditions of Transfer. If the Transferor does not Transfer the Transferor Interest as provided herein within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this *Section* without once again complying with its terms and conditions, shall cease and terminate.

6.1.4.6. Any Transfer of the Transferor Interest after the last day of the Free Transfer Period or without strict compliance with the terms, provisions and conditions of this *Section* and the other terms, provisions, and conditions of this Agreement, shall be null, void, and of no force or effect.

6.1.4.7. In lieu of the Company electing to exercise the Purchase Option, all of the Members, other than the Transferor, may elect to exercise the Purchase Option in proportion to their remaining Percentages (or in such other proportions as they may mutually agree), and on the same terms and conditions as set forth in this *Section* 6.1.4, by specifying such election and providing written notice of their election to do so to the Transferor during the Purchase Option Period.

6.1.5. Admission of Transferee as Member. Except as specifically provided otherwise in this Agreement, the transferee of all or any portion of, or any interest or rights in, any Membership Rights shall not be entitled to become a Member or exercise any Membership Rights. The transferee shall be entitled to receive, to the extent transferred, only the distributions and other rights specifically pertaining to the ownership of an Interest to which the transferor would be entitled; and the transferee shall not be admitted as a Member unless the Members unanimously consent to such admission.

6.1.6. Permitted Transfers to Affiliates and Members. Notwithstanding anything set forth in this Agreement to the contrary, but provided that the Conditions of Transfer are satisfied, any Member may at any time, and from time to time, Transfer all or any portion of, or any interest or rights in, the Member's Membership Rights to (i) any other Member (provided that all other Members are provided the opportunity to purchase such Membership Rights in proportion to their remaining Percentages (or in such proportions as they may mutually agree)); or (ii) any Affiliate of the Member; and, in the event that a Member Transfers all of the Membership Rights associated with any portion or all of such Member's Interests pursuant to the terms of this *Section*, such transferee shall thereupon be admitted as a Member.

6.2. VOLUNTARY WITHDRAWAL. No Member shall have the right or power to effect a Voluntary Withdrawal from the Company prior to the dissolution and winding up of the Company,

except upon the unanimous consent of the written consent of a majority of the Percentages then held by each Class of Members. Any Member who effectuates a Voluntary Withdrawal in violation of this Agreement shall not be permitted to receive the fair value of the Member's Interest as of the date of the Voluntary Withdrawal as otherwise provided in Section 18-604 of the Act, and any amounts which may be due to such Member under this Agreement shall be subject to offset for any damages caused to the Company as a result of such wrongful Voluntary Withdrawal.

### 6.3. OPTIONAL BUY-OUT IN EVENT OF INVOLUNTARY WITHDRAWAL.

6.3.1. Deemed Offer. Upon an Involuntary Withdrawal, the Withdrawn Member shall be deemed to offer for sale (the "Withdrawal Offer") to the Company all of the Membership Rights owned of record and beneficially by the Withdrawn Member (the "Withdrawal Interest") at the Option Purchase Price, and the Withdrawn Member shall thereupon become an Interest Holder pending the resolution of the Withdrawal Offer, but shall not remain a Member.

6.3.2. Timing for Acceptance. The Withdrawal Offer shall be and remain irrevocable for a period (the "Withdrawal Offer Period") ending at 11:59 P.M. local time at the Company's principal office on the sixtieth (60) day following the later of the date on which the Involuntary Withdrawal occurred or the date on which the Company first had actual notice of the Involuntary Withdrawal. At any time during the Withdrawal Offer Period, the Company may accept the Withdrawal Offer by notifying the Withdrawn Member (the "Withdrawal Notice") of its acceptance. The Withdrawn Member, as an Interest Holder only, shall not be deemed a Member for the purpose of voting on whether the Company shall accept the Withdrawal Offer.

6.3.3. Closing Date. If the Company accepts the Withdrawal Offer, the Withdrawal Notice shall fix a closing date (the "Withdrawal Closing Date") for the purchase that shall not be less than ten (10) days after the date of the Withdrawal Notice or more than sixty (60) days after the expiration of the Withdrawal Offer Period, and the Option Purchase Price shall be paid on the Withdrawal Closing Date in accordance with the terms set forth in *Section 6.5*.

6.3.4. Status if Offer Not Accepted. If the Company fails to accept the Withdrawal Offer, then the Withdrawn Member, upon the expiration of the Withdrawal Offer Period, thereafter shall continue as an Interest Holder but shall not be admitted as a Member unless the Members unanimously consent to such admission, and shall not be entitled to receive the fair value of the Member's Interest as of the date of the Involuntary Withdrawal from the Company as otherwise provided in Section 18-604 of the Act.

6.3.5. Pro Rata Purchase by Remaining Members. In lieu of the Company accepting the Withdrawal Offer, all of the Members, other than the Withdrawn Member, may elect to accept the Withdrawal Offer in proportion to their remaining Percentages (or in such other proportions as they may mutually agree), and on the same terms and conditions as set forth in this *Section 6.3*, by specifying such election and providing the Withdrawal Notice during the Withdrawal Offer Period.

#### 6.4. OPTIONAL BUY-OUT IN EVENT OF ADVERSE LEGAL PROCEEDINGS.

6.4.1. Deemed Offer. If a Member shall become subject to Adverse Legal Proceedings, such Member shall thereupon cease to be a Member and be deemed to offer for sale (the "Deemed Offer") to the Company, on the date such former Member became subject to such Adverse Legal Proceedings, all of the Membership Rights owned of record and beneficially by such former Member.

6.4.2. Timing for Acceptance. The Deemed Offer shall be and remain irrevocable for a period (the "Deemed Offer Period") ending at 11:59 P.M. local time at the Company's principal office on the sixtieth (60th) day following the later of the date on which such former Member becomes subject to such Adverse Legal Proceedings or the date on which the Company first had actual notice thereof. At any time during the Deemed Offer Period, the Company may accept the Deemed Offer by notifying such former Member of its acceptance.

6.4.3. Closing Date. If the Company accepts the Deemed Offer, it shall fix a closing date for the purchase that shall not be more than ninety (90) days after the expiration of the Deemed Offer Period.

6.4.4. Purchase Price. If the Company accepts the Deemed Offer, the Company shall purchase the interest of such former Member for a cash price equal to the amount the former Member would receive if the Company were liquidated and an amount equal to the Book Value were available for distribution to the Members pursuant to *Section 4.4*. As used herein, the term "Book Value" means the book value of the Company computed by the certified public accounting firm regularly servicing the Company, in accordance with generally accepted accounting principles, consistently applied, as of the end of the then immediately preceding full taxable year of the Company, without regard for goodwill or any other intangible asset of the Company except to the extent that an intangible asset is reflected on the balance sheet of the Company for such immediately preceding year.

6.4.5. Status if Offer Not Accepted. If the Company fails to accept the Deemed Offer, then such former Member or such former Member's successor by virtue of the Adverse Legal Proceedings, as the case may be, thereafter shall continue solely with those rights specifically provided such Person by applicable law, but shall not be admitted as a Member unless the Members unanimously consent to such admission, and shall not be entitled to receive the fair market value of such former Member's Interest as of the date such former Member ceased being a Member as otherwise provided in Section 18-604 of the Act.

6.5. OPTION PURCHASE PRICE. The "Option Purchase Price" for a Transferor Interest or Withdrawal Interest subject to sale in accordance with this *Article VI* shall be the value of the subject Interest as of the Valuation Date established in accordance with provisions of this *Section 6.5*, without regard to any adjustments, including, without limitation, lack of marketability and minority discounts.

6.5.1. Valuation of the Company. The sole shareholder of the initial Class B Member is a trust established by the Marquette Rail Corporation Employees' Stock Ownership Plan ("ESOP"). In accordance with the terms of the ESOP, the Class B Interests will be valued as of the end of each calendar year by an independent evaluator. The Company may from time to time, or at any time a valuation of the Company is required under the Agreement, request that the independent evaluator separately value the Company as of the end of the most recent calendar year. The value of the Company established by the independent evaluator shall be the value of the Company for the purposes of this Agreement.

6.5.2. Calculation of Option Purchase Price. The Option Purchase Price for the Interests subject to purchase shall be equal to the Percentage applicable to the Interests applied to the value of the Company established under Section 6.5.1.

6.5.3. Valuation Date. The term "Valuation Date" as used in this Section 6.5 shall mean the effective date of the most recent ESOP Valuation preceding the "offer date" as established by the pertinent provisions of this Agreement.

6.5.4. Alternate Payment Terms. At the election of the Company made not less than ten (10) days prior to the applicable closing date, in lieu of cash payment of the Option Purchase Price as provided in the pertinent provisions of this Agreement, the Company shall pay the Option Purchase Price as follows:

6.5.4.1. Cash. Twenty-five percent (25%) thereof by attorney's escrow check, or cashiers', certified or wired funds; and

6.5.4.2. Promissory Note. The balance thereof by the Company's execution and delivery of its promissory note to the Transferring Interest Holder, in the form attached hereto as *Exhibit B*, payable over a term of up to five (5) years, as determined by the Company at the time of closing, with interest thereon fixed at *The Wall Street Journal's* Prime Rate forty-five (45) days prior to the closing date.

6.6. WAIVER OF RESTRICTIONS. At any time, and from time to time, the Members may, by the written consent of a majority of the Percentages then held by each Class of Members, waive any restrictions imposed by this Agreement regarding Transfer or withdrawal by a Member or Interest Holder.

## **Article VII**

### **DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY**

7.1. EVENTS OF DISSOLUTION. The Company shall be dissolved upon the happening of any of the following events:

7.1.1. when the period fixed for its duration, if any, in Section 2.4 has expired;

7.1.2. upon the unanimous written agreement of all of the Members without the consent of the Managers, or at any time there are no Members;

7.1.3. upon the sale of all or substantially all of the assets of the Company; or

7.1.4. the entry of a decree of judicial dissolution under Section 18-802 of the Act.

7.2. PROCEDURE FOR WINDING UP AND DISSOLUTION. If the Company is dissolved, the Managers shall wind up its affairs. If there shall be no Manager, the Members shall elect a Person to wind up the affairs of the Company. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in accordance with the provisions of *Section 4.4.*

7.3. FILING OF CERTIFICATE OF CANCELLATION. Upon completion of the winding up of the affairs of the Company, the Managers shall promptly file a Certificate of Cancellation with the Office of the Secretary of State of the State of Delaware. If the Managers have caused the dissolution of the Company, whether voluntarily or involuntarily, then the Person selected by a majority vote of the Members to wind up the affairs of the Company shall file the Certificate of Cancellation.

#### **Article VIII BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS**

8.1. BANK ACCOUNTS. All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Managers shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

#### 8.2. BOOKS AND RECORDS.

8.2.1. Duties of Managers. The Managers shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to: (i) complete and accurate information regarding the state of the business and financial condition of the Company; (ii) a copy of the Certificate of Formation and Limited Liability Company Agreement and all amendments to the Certificate of Formation and the Limited Liability Company Agreement; (iii) a current list of the names and last known business, residence, or mailing addresses of all Members; and (iv) the Company's federal, state, and local tax returns.

8.2.2. Maintenance of Books and Records. The books and records shall be maintained in accordance with generally accepted accounting practices, consistently applied, and shall be available at the Company's principal office for examination by any Member or the Member's

duly authorized representative at any and all reasonable times during normal business hours for any purpose reasonably related to such Member's interest as a Member.

8.2.3. Costs and Expenses. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

8.3. ANNUAL ACCOUNTING PERIOD. The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Managers, subject to the requirements and limitations of the Code.

8.4. REPORTS. Within (120) days after the end of each taxable year of the Company, the Managers shall cause to be sent to each Person who was a Member at any time during the accounting year then ended: (i) an annual audit, prepared by the Company's independent accountants in accordance with standards issued by the American Institute of Certified Public Accountants, and (ii) a report summarizing the fees and other remuneration paid by the Company to any Member, the Managers or any Affiliate in respect of the taxable year. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Managers shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at such requesting Member's expense, the Managers shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

8.5. TAX MATTERS PARTNER. Kevin E. Ruble shall be the Company's tax matters partner ("Tax Matters Partner"). The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6221, *et seq.* The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner may not compromise any dispute with the Internal Revenue Service without the approval of the Managers.

8.6. TAX ELECTIONS. The Managers shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the Managers' sole and absolute discretion, subject to the Managers' obligations to act in the best interest of the Company and its Members.

8.7. TITLE TO COMPANY ASSETS.

8.7.1. General. Except as provided in *Section 8.7.2*, all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

8.7.2. Direction by Managers to Hold Legal Title Not in Company's Name. The Managers may direct that legal title to all or any portion of the Company's Assets be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Managers may cause title to be acquired and held in its name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's Assets (or any part thereof) is solely for the convenience of the Company, and all of the Assets shall be treated as Company Assets.

**Article IX**  
**MISCELLANEOUS PROVISIONS**

9.1 ACKNOWLEDGMENTS REGARDING LEGAL REPRESENTATION.

9.1.1 Legal Representation. Each party to this Agreement acknowledges that this Agreement has been prepared by counsel representing the Company, that such counsel also represents Farmrail System, Inc. on other matters and that counsel has informed each party that a conflict of interest may exist between one or more other parties to this Agreement. Having been advised of the need to have independent counsel, and having had the opportunity to do so, each party acknowledges that either independent counsel has been consulted by that party or that party, knowing of the potential conflict, nevertheless consents to a joint representation. Accordingly, no question of interpretation or construction with regard to this Agreement shall be based upon consideration of authorship.

9.1.2 Tax Consequences. Each party to this Agreement acknowledges that counsel who has prepared this Agreement has advised that the transactions contemplated by this Agreement may have substantial tax consequences, both for income tax purposes and for estate and gift tax purposes, including without limitation, the ability of an individual Member's estate to elect the tax deferral opportunities accorded to closely-held business interests. Having been advised of the need to have independent tax counsel, and having had the opportunity to do so, each party acknowledges that either independent tax counsel has been consulted or, knowing the need, that party nevertheless does not wish to consult independent tax counsel.

9.1.3 Other Purposes. Each party to this Agreement acknowledges that counsel who has prepared this Agreement has advised that the values set by this Agreement may not be controlling for any purpose involving a person not a party to this Agreement unless such person, having consulted independent counsel or having been advised of the need to do so, agrees in writing to accept the values set by this Agreement.

9.2. ASSURANCES. Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Managers or the other Members, as the case may be, deem appropriate to comply with the requirements of the Act for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

9.3. NOTIFICATIONS. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a “notice”) required or permitted under this Agreement must be in writing and either delivered personally, sent by United States certified or registered mail, postage prepaid, return receipt requested, or sent by nationally recognized express delivery service guaranteeing next business day delivery. Any notice to be given hereunder by the Company shall be given by the Managers. A notice must be addressed to an Interest Holder at the Interest Holder’s last known address as reflected on the records of the Company. A notice to the Company must be addressed to the Company’s principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed to be given three (3) business days after it is mailed. A notice that is sent by express next business day delivery will be deemed to be given one (1) business day after it is sent. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices and, thereafter, notices are to be directed to those substitute addresses or addressees.

9.4. SPECIFIC PERFORMANCE. The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that monetary damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach of threatened breach of one or more provisions of this Agreement, any party who may be injured (in addition to other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach, or (ii) compelling the performance of any obligation which, if not permitted, would constitute a breach.

9.5. COMPLETE AGREEMENT. This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of the Members holding not less than a majority of the Percentages then held by each Class of Members.

9.6. APPLICABLE LAW. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware.

9.7. SECTION TITLES. The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

9.8. BINDING PROVISIONS. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

9.9. JURISDICTION AND VENUE. Any suit involving any dispute or matter arising under this Agreement may only be brought in the State of Delaware. Each of the Members and Managers hereby consent to the exercise of personal jurisdiction by the Delaware Courts with respect to any such proceeding.

9.10. TERMS. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

9.11. SEVERABILITY OF PROVISIONS. Each and every provision of this Agreement shall be considered severable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

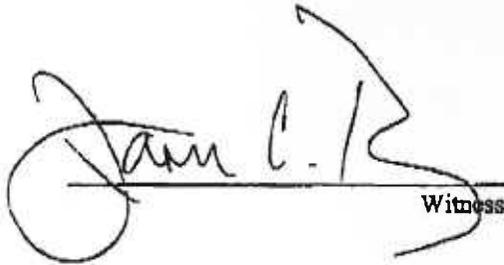
9.12. TIME IS OF THE ESSENCE. Time is of the essence for all purposes of this Agreement.

9.13. TAX STATUS. The parties to this Agreement intend that the Company shall be classified as a partnership for federal, state and local income tax purposes and the parties agree that the provisions of this Agreement shall be construed and applied in a manner that will not impair the qualification of the Company as such under the applicable provisions of the Code, or the laws of any other state or local tax authorities, and the parties further agree that insofar as any provisions of this Agreement could be construed to adversely affect the qualification of the Company as a partnership for such purposes, such provisions shall be disregarded and shall become null and void.

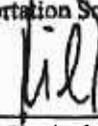
9.14. COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

*[Balance of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

  
\_\_\_\_\_  
Witness

MEMBERS:  
Transportation Solutions, Inc.

By:   
\_\_\_\_\_  
Kevin E. Ruble, President

Farmrail System, Inc.

By: \_\_\_\_\_  
George C. Betke, Jr., Chairman

Progressive Rail Incorporated

By: \_\_\_\_\_  
Tim Eklund, \_\_\_\_\_  
(Title)

Huron Leasing Corp.

By: \_\_\_\_\_  
James George, \_\_\_\_\_  
(Title)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

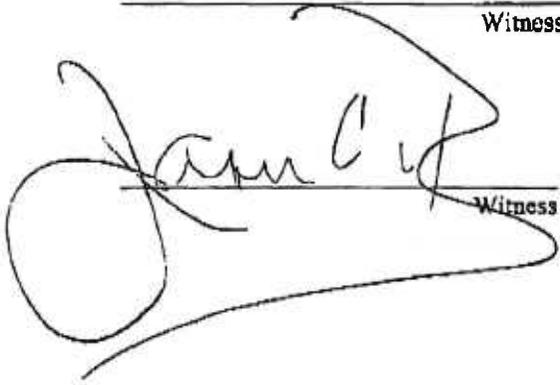
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Rick Jany (SEAL)

\_\_\_\_\_  
Rick Cecil (SEAL)

Marquette Rail Corporation

By:   
\_\_\_\_\_  
Kevin E. Ruble, President

  
\_\_\_\_\_  
Witness

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Kevin E. Ruble, President

Farmrail System, Inc.

By: George C. Betke, Jr.  
George C. Betke, Jr., Chairman

Progressive Rail Incorporated

By: \_\_\_\_\_  
Tim Eklund,  
(Title)

Huron Leasing Corp.

By: \_\_\_\_\_  
James George,  
(Title)

\_\_\_\_\_  
Rick Jany (SEAL)

\_\_\_\_\_  
Rick Cecil (SEAL)

Marquette Rail Corporation

By: \_\_\_\_\_  
Kevin E. Ruble, President

\_\_\_\_\_  
Witness

Wray Ann W. Betke  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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By: \_\_\_\_\_  
Kevin E. Ruble, President

Farmrail System, Inc.

By: \_\_\_\_\_  
George C. Betke, Jr., Chairman

Progressive Rail Incorporated

By:  \_\_\_\_\_  
Tim Eklund, ~~Vice President - Corporate Development~~  
(Title)

Huron Leasing Corp.

By: \_\_\_\_\_  
James George,  
(Title)

\_\_\_\_\_  
Rick Jany (SEAL)

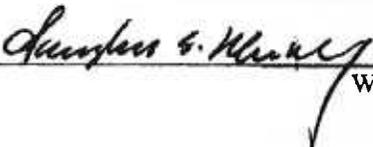
\_\_\_\_\_  
Rick Cecil (SEAL)

Marquette Rail Corporation

By: \_\_\_\_\_  
Kevin E. Ruble, President

\_\_\_\_\_  
Witness

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Witness

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\_\_\_\_\_  
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**MEMBERS:**

Transportation Solutions, Inc.

By: \_\_\_\_\_  
Kevin E. Ruble, President

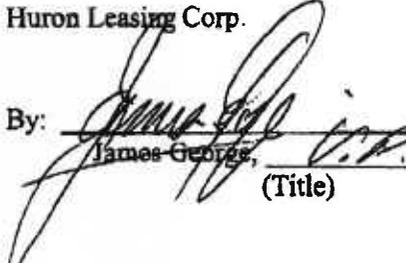
Farmrail System, Inc.

By: \_\_\_\_\_  
George C. Betke, Jr., Chairman

Progressive Rail Incorporated

By: \_\_\_\_\_  
Tim Eklund, \_\_\_\_\_  
(Title)

Huron Leasing Corp.

By:  \_\_\_\_\_  
James George, \_\_\_\_\_  
(Title)

(SEAL)

\_\_\_\_\_  
Rick Jany

(SEAL)

\_\_\_\_\_  
Rick Cecil

Marquette Rail Corporation

By: \_\_\_\_\_  
Kevin E. Ruble, President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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\_\_\_\_\_  
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By: \_\_\_\_\_  
Kevin E. Ruble, President

Farmrail System, Inc.

By: \_\_\_\_\_  
George C. Betke, Jr., Chairman

Progressive Rail Incorporated

By: \_\_\_\_\_  
Tim Eklund, \_\_\_\_\_  
(Title)

Huron Leasing Corp.

By: \_\_\_\_\_  
James George, \_\_\_\_\_  
(Title)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

*[Handwritten Signature]*  
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Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

*[Handwritten Signature]* (SEAL)  
\_\_\_\_\_  
Rick Jany

\_\_\_\_\_  
Rick Cecil (SEAL)

Marquette Rail Corporation

By: \_\_\_\_\_  
Kevin E. Ruble, President

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

**MEMBERS:**

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By: \_\_\_\_\_  
Kevin E. Ruble, President

Farmrail System, Inc.

By: \_\_\_\_\_  
George C. Betke, Jr., Chairman

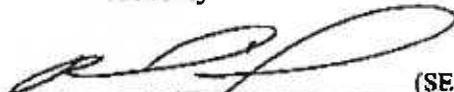
Progressive Rail Incorporated

By: \_\_\_\_\_  
Tim Eklund, \_\_\_\_\_  
(Title)

Huron Leasing Corp.

By: \_\_\_\_\_  
James George, \_\_\_\_\_  
(Title)

\_\_\_\_\_  
Rick Jany (SEAL)

  
Rick Cecil (SEAL)

Marquette Rail Corporation

By: \_\_\_\_\_  
Kevin E. Ruble, President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

  
Suprette Cecil  
Witness

\_\_\_\_\_  
Witness

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
MARQUETTE RAIL, LLC**

**Exhibit A**

**LIST OF CLASS A MEMBERS, CAPITAL, AND PERCENTAGES**

| <u>Name and Address</u>        | <u>Initial Capital<br/>Contribution/<br/>FMV of Property and<br/>In-Kind Contributions</u> | <u>Percentages</u> |
|--------------------------------|--|--------------------|
| Transportation Solutions, Inc. | \$ -0- / \$125,000   | 10%                |
| Farmrail System, Inc.          | \$75,000 / \$ 75,000   | 12%                |
| Progressive Rail, Inc.         | \$ -0- / \$ 50,000   | 4%                 |
| Huron Leasing Corp.            | \$25,000 / \$ 25,000   | 4%                 |
| Rick Jany                      | \$ -0- / \$ 10,000   | 1%                 |
| Rick Cecil                     | \$25,000 / \$ -0-  | 9%                 |

**LIST OF CLASS B MEMBERS, CAPITAL, AND PERCENTAGES**

| <u>Name and Address</u>    | <u>Initial Capital<br/>Contribution/<br/>FMV of Property and<br/>In-Kind Contributions</u> | <u>Percentages</u> |
|----------------------------|--|--------------------|
| Marquette Rail Corporation | \$1,000,000 / \$ -0-   | 60%                |

**PROMISSORY NOTE**

\$ \_\_\_\_\_

Wilmington, Delaware

\_\_\_\_\_, 20\_\_

\_\_\_\_\_ ("Debtor") for value received, promises to pay to the order of \_\_\_\_\_ ("Creditor") the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States plus interest at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum on the unpaid principal balance according to the following terms:

Commencing one (1) month from the date hereof and continuing on the first day of each succeeding month thereafter for sixty (60) months, equal monthly installments of principal and interest, as amortized over a period of five (5) years, in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) each.

The entire unpaid principal balance together with all accrued but unpaid interest thereon shall be due and payable in full on or before \_\_\_\_\_. Debtor may prepay this note in whole or in part, at any time, and from time to time, without premium or penalty.

If any payment of principal or interest remains unpaid for a period of thirty (30) days after the due date thereof, or if this note should not be paid in full at maturity, or if Debtor dissolves or sells all or substantially all of its assets, or if Debtor should become insolvent or make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy, or if a petition in bankruptcy should be filed against Debtor, or if a judgment is entered against Debtor, or if any attachment or garnishment is used, or any lien filed, against any property of Debtor (each an "Event of Default"), the entire unpaid balance of this note, together with all accrued interest and any late payment fees thereon, shall immediately become due and payable.

Upon the occurrence of an Event of Default such that this Note is accelerated as provided above, the outstanding principal balance plus any accrued interest and accrued late charges due and payable shall bear interest at the Default Interest Rate (which shall be equal to two percentage points (2%) above the interest rate then in effect) from the date of default until the date of payment in full.

**Exhibit B**

The terms of this note shall be binding upon the Debtor and inure to the benefit of Creditor, as well as its respective heirs, representatives, successors and assigns, as the case may be. This note shall be construed and governed in accordance with Delaware law and Creditor may avail itself of all remedies under such law including the Uniform Commercial Code as the same may be in effect from time to time.

Debtor waives the benefit of any exemption laws of Delaware or any other jurisdiction and waives presentment, protest and demand, as well as notice of protest, demand, dishonor and nonpayment of this note.

DULY EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_ (Seal)

**Schedule 3.2**

**Capitalization, Etc.**

Schedule 3.2 (a)

See Marquette Rail, LLC Operating Agreement attached to Schedule 2.3.

Schedule 3.2 (b)

See Marquette Rail Waiver of Certain Rights set forth on Schedule 2.3.

**Schedule 3.4**

**No Conflicts**

None.

**Schedule 3.5(b)**

**Jurisdictions of Qualification**

Marquette Rail, LLC is qualified and licensed to do business in Michigan.

**Schedule 3.6 (a) and (i)**

**Tax Returns and Withheld or Collected Taxes**

With respect to the K-1 withholding, Marquette Rail has not reported or withheld Michigan State income tax totaling approximately \$85,000 for the periods of 2005 to present for Progressive Rail, RC Rail Investments and Transportation Solutions. RC Rail Investments has paid Michigan State tax directly by filing a MI 1040 each year. A Voluntary Disclosure Letter has been filed with the state of Michigan and taxes paid for Progressive Rail and Transportation Solutions, thereby resolving any issues with the state of Michigan concerning reporting or payment of withholding taxes.

**Schedule 3.6(k)**

**State and Local Tax Returns**

Michigan Small Business Tax

Michigan Property Tax

**SCHEDULE 3.8 – REDACTED**

**Schedule 3.9**

**Undisclosed Liabilities and Debt**

None.

**Schedule 3.10**

**Conduct in Ordinary Course; Absence of Changes**

Schedule 3.10 (e): Please see Schedule 3.19(a).

Schedule 3.10 (l): Please see Schedule 3.19(a).

**SCHEDULE 3.11a – REDACTED**

**SCHEDULE 3.11b – REDACTED**

**Schedule 3.12**

**Governmental Permits**

Hazardous Materials Certificate of Registration for Registration Years 2010-2013 issued by the United States of America Department of Transportation Pipeline and Hazardous Materials Safety Administration on May 10, 2010 and expiring June 30, 2013, Registration No. 051010556014SU.

Radio Station Authorization granted by the Federal Communications Commission on October 31, 2005 and expiring October 31, 2015, FCC Registration Number 0013946959.

**Schedule 3.13**

**Litigation**

None.

**SCHEDULE 3.14 – REDACTED**

**Schedule 3.15**

**Receivables**

Marquette Rail has resolved and will soon receive a lump sum payoff in lieu of the outstanding account receivable from Meserole. After receiving this payment, Meserole (Filco) will not have an outstanding balance.

**Schedule 3.16(a)**

**Owned Real Property**

None.

**Schedule 3.16(b)**

**Leased Real Property**

Land and Track Lease Agreement, dated November 11, 2005, between CSX Transportation and Marquette Rail, LLC.

Commercial Lease, dated February 9, 2010, between Marquette Rail and John Husted.

**SCHEDULE 3.16c – REDACTED**

**Schedule 3.16(d)**

**Subleases of Leased Real Property**

Track Lease (Storage Only), dated as of August 1, 2006, by and between Marquette Rail, LLC and The Dow Chemical Company (as assigned to Occidental Chemical Corporation pursuant to that certain letter agreement, dated as of June 15, 2009).

Track Lease (Storage Only), dated November 1, 2009, between Marquette Rail, LLC and Martin Marietta Magnesia Specialties LLC.

**Schedule 3.16(e)**

**Enforceability and Defaults under Leases**

None.

**Schedule 3.17**

**Tangible Personal Property**

Tangible Personal Property includes all assets set forth below on this Schedule 3.17, all assets set forth on the attachments to this Schedule 3.17 and any and all other office equipment, tools, supplies and personal property used in the Business.

GP 38-2 Locomotive - Serial # MQT 2004

GP 38-2 Locomotive - Serial # MQT 2005

GP 38-2 Locomotive - Serial # MQT 2006

GP 38-2 Locomotive - Serial # MQT 2007

GP 38-2 Locomotive - Serial # MQT 2008

Manistee 2009 Interstate Trailer

Manistee 2004 Roark Trailer

Manistee 1997 VMA PAMU Trailer

## MARQUETTE RAIL - VEHICLES

| Acquisition | Dept  | Year: | Make/Model:                               | Vin #:            | Garaged:  | Class: |
|-------------|-------|-------|---|-------------------|-----------|--------|
| 11/15/2005  | ADM   | 2004  | CHEVORLET SUBURBAN                        | 3GNFK16Z54G104606 | LUDINGTON | 1499   |
| 11/18/2005  | ADM   | 2002  | FORD EXPLORER XLT 4x4                     | 1FMZU73KX2Z73166  | LUDINGTON | 1499   |
| 11/19/2005  | ENG   | 2002  | FORD F-350 4x4 EXTENDED CAB WITH HIGHRAIL | 1FTSX31L02EC70429 | MANISTEE  | 2499   |
| 11/18/2005  | ENG   | 2003  | CHEVORLET 2500 4x4 CREW W/HIGHRAIL        | 1GBHK23U23F193443 | LUDINGTON | 1499   |
| 11/22/2005  | ENG   | 1999  | DODGE 3500                                | 3B6MC3669XM585789 | MANISTEE  | 21499  |
| 10/31/2005  | TRANS | 2001  | FORD F-250                                | 1FTNX54F32EC56525 | LUDINGTON | 1499   |
| 11/9/2005   | ENG   | 1990  | FORD 9000                                 | 1FDYW90L4LVA45512 | MANISTEE  | 33499  |
| 1/26/2006   | ENG   | 2003  | FORD F-350 4x4 CREW CAB WITH HIGHRAIL     | 1FTSW31LX3ED27353 | MANISTEE  | 1499   |
| 8/29/2006   | ENG   | 1989  | FORD F-700                                | 1FDXK74PKVA39690  | MANISTEE  | 1499   |
| 11/19/2008  | ENG   | 1989  | Cheyenne Pickup                           | 1GC0C14Z3KE134465 | MANISTEE  | 1499   |
| 12/23/2008  | ENG   | 2006  | DODGE 2500-PLOW                           | 3D7KS29C26G130450 | MANISTEE  | 1499   |
| 1/15/2009   | ENG   | 2006  | FORD F350SD 4X4 CREW CAB                  | 1FTVW31516EC75599 | MANISTEE  | 1499   |
| 4/13/2009   | ENG   | 2004  | FORD SUPER DUTY                           | 1FTNX21L74EA78712 | SPARTA    |        |
| 9/8/2009    | MECH  | 2003  | FORD EXT SUPER DUTY                       | 1FTSW31P93EB54198 | MANISTEE  | 1499   |
| 2/25/2010   | ENG   | 1988  | DUMP TRUCK KENWORTH                       | 1XKDB59X1JF505753 | MANISTEE  | 1499   |
| 6/9/2010    | ENG   | 2006  | 2006 Ford F350 /                          | 1FDWW31506EC61642 | MANISTEE  | 1499   |

**MARQUETTE RAIL - LOCOMOTIVES**

| <u>Date</u> | <u>Description</u>  |
|-------------|---------------------|
| 6/21/2011   | GATX LOCO GRP, INC. |
| 9/7/2011    | GATX LOCO GRP, INC. |
| 9/7/2011    | GATX LOCO GRP, INC. |

# MARQUETTE RAIL - TRANSPORTATION EQUIPMENT

| DATE:     | Place Purchased: | Description:                     |
|-----------|------------------|----------------------------------|
| 1/1/2006  | WABTEC           | LCU'S                            |
| 3/23/2006 | WABTEC           | LCU'S                            |
| 4/17/2007 | APOGEE SYSTEMS   | I MCREW ONBOARD COMPUTER SYSTEMS |

MARQUETTE RAIL - IMPROVEMENTS TO LEASED PROPERTY

| DATE:     | Place Purchased:       | Description:                  |
|-----------|------------------------|-------------------------------|
| 6/8/2007  | KOPPERS                | TIES                          |
| 6/13/2007 | KOPPERS                | TIES                          |
| 6/13/2007 | KOPPERS                | TIES                          |
| 6/18/2007 | BIRMINGHAM RAIL & LOCO | OTHER TRACK MATERIAL          |
| 6/20/2007 | KOPPERS                | TIES                          |
| 6/21/2007 | KOPPERS                | TIES                          |
| 6/22/2007 | KOPPERS                | TIES                          |
| 7/5/2007  | KOPPERS                | TIES                          |
| 7/5/2007  | KOPPERS                | TIES                          |
| 7/10/2007 | KOPPERS                | TIES                          |
| 7/10/2007 | KOPPERS                | TIES                          |
| 7/10/2007 | KOPPERS                | TIES                          |
| 7/11/2007 | KOPPERS                | TIES                          |
| 7/11/2007 | KOPPERS                | TIES                          |
| 7/26/2007 | KOPPERS                | TIES                          |
| 7/26/2007 | KOPPERS                | TIES                          |
| 7/27/2007 | KOPPERS                | TIES                          |
| 7/30/2007 | KOPPERS                | TIES                          |
| 8/2/2007  | KOPPERS                | TIES                          |
| 8/3/2007  | KOPPERS                | TIES                          |
| 8/8/2007  | KOPPERS                | TIES                          |
| 8/8/2007  | KOPPERS                | TIES                          |
| 8/8/2007  | KOPPERS                | TIES                          |
| 8/9/2007  | KOPPERS                | TIES                          |
| 8/9/2007  | KOPPERS                | TIES                          |
| 8/10/2007 | KOPPERS                | TIES                          |
| 8/23/2007 | KOPPERS                | TIES                          |
| 8/23/2007 | KOPPERS                | TIES                          |
| 10/4/2007 | ONTARIO TRAP ROCK      | BALLAST                       |
| 12/1/2007 | VARIOUS                | TIES FROM INVENTORY           |
| 7/13/2007 | E80 PLUS CONTRACTORS   | BRIDGE                        |
| 2/27/2008 | SENG DOCK & TRUCKING   | LOADS & HAULING STONE         |
| 3/21/2008 | BIRMINGHAM RAIL & LOCO | SPIKES                        |
| 4/7/2008  | PERFORMANCE POLYMERS   | REBUILD ON CROSSING           |
| 4/9/2008  | KOPPERS                | SWITCH TIES & CROSS TIES      |
| 4/10/2008 | TOM PURCHASE ROOFING   | MANISTEE ROOF                 |
| 5/14/2008 | H&H TRACKWORKS         | SURFACE 15.2 MILES OF TRACK   |
| 4/30/2010 | GALAXY ELECTRIC        | Hot Start- Electrical Outlets |
| 5/8/2010  | GALAXY ELECTRIC        | Hot Start- Electrical Outlets |
| 5/10/2010 | GALAXY ELECTRIC        | Hot Start- Electrical Outlets |
| 5/10/2010 | GALAXY ELECTRIC        | Hot Start- Electrical Outlets |
| 8/10/2010 | Somsel Construction    | Insulation / Manistee Bldg    |
| 6/20/2011 | Butch Leonard          | Manistee Bldy Roof            |

# MARQUETTE RAIL - ENGINEERING TOOLS & EQUIPMENT

| DATE:      | Place Purchased:            | INVOICE NO: | Description:   |
|------------|-----------------------------|-------------|--|
| 11/30/2005 | NORTHERN MICHIGAN EQUIP     |             | LOADER WITH BACKHOE                                      |
| 11/14/2005 | MODERN TRACK MACHINERY      |             | RAIL SAW   |
| 12/7/2005  | SENG CRANE                  |             | 1977 FORKLIFT  |
| 4/1/2006   | STANLEY HYDRAULIC           |             | IMPACT WRENCH  |
| 7/1/2006   | LINUS STARRING              |             | TAMPER   |
| 7/11/2006  | EPP TRACK                   |             | TIE CHANGER  |
| 10/26/2006 | CSX TRANSP. PURCH & MATER   | 7099999     | SNOW PLOW  |
| 1/30/2007  | MATWELD INC.                | 70663       | HYDROLIC RAIL DRILL & ACCESSORIES                        |
| 3/28/2007  | HUEY'S WELDING              | 140892      | BROOM ASSEMBLY W/ MOUNTING KIT FOR THE BALLAST REGULATOR |
| 3/28/2007  | ADELMAN'S                   | 11227121    | MOTOR FOR THE TAMPER                                     |
| 1/12/2009  | AIS CONSTRUCTION EQUIP INC  | BACKHOE     | BACKHOE  |
| 4/17/2009  | TODD JAMES GALLUP           | PLOW        | PLOW   |
| 8/27/2009  | Townsend Chemical Division  | 46943       | Sprayer Equipment  |
| 4/1/2010   | Modern Track Machinery Inc. | 203503      |  |

# MARQUETTE RAIL - Mechanical Tools and Equipment

| DATE:     | Place Purchased:                        | Invoice No.: | Description:   |
|-----------|---|--------------|--|
| 2/15/06   | Stanley Hydraulic Tools and Equipment   |              | Spike Driver   |
| 2/24/06   | RSC Equipment Rental                    |              | Air Compressor   |
| 3/8/06    | New York Air Brake                      |              | Test Device  |
| 12/26/06  | TK Young Enterprises LLC                | 61219        | Contractors to Install Hot Starts  |
| 12/31/06  | Kim Hotstart Mfg.                       |              | Hot Starts for Locomotives   |
| 12/29/06  | Kim Hotstart Mfg.                       |              | Hot Starts for Locomotives   |
| 1/22/2007 | GALAXY ELECTRIC                         | CD99052653   | 200 AMP SERVICE ON POLE IN BALDWIN & INSTALLATION OF 3 BLOCK HEATER LOCATIONS  |
| 1/22/2007 | GALAXY ELECTRIC                         | 1175         | 200 AMP SERVICE ON POLE IN LUDINGTON & INSTALLATION OF 2 BLOCK HEATER LOCATION |
| 3/19/07   | INDEPENDENT MACHINE CO OF GLADSTONE     | 1176         |  |
| 3/18/08   | JASON COOPSHAW                          | LATHE        | PRESSURE WASHER  |
| 9/4/09    | Manistee Welding & Piping Service, Inc. | JC2008       | Partial Billing on Materials for the Sand Tower                                |
| 9/17/09   | Manistee Welding & Piping Service, Inc. | 38929        | Partial Billing on Materials for the Sand Tower                                |
| 10/6/09   | Manistee Welding & Piping Service, Inc. | 38962        | Partial Billing on Materials for the Sand Tower                                |
| 11/18/98  | Manistee Welding & Piping Service, Inc. | 39019        | Partial Billing on Materials for the Sand Tower                                |
| 11/16/09  | Northern Gravel Co                      | 39125        |  |
| 11/30/09  | Kelder Inc.                             | 1956         |  |
| 12/23/09  | Geo F Alger Co                          | 2009-07      |  |
| 12/15/09  | Seng Crane & Excavating, Inc            | 401628       | sand hoopers   |
| 12/30/09  | Heavy Metal                             | 32731        | Set Sand Tower / Crane   |
| 12/30/09  | Galloup                                 | 3175         | sand tower   |
| 7/23/10   | KELDER LLC                              |              | sand tower   |
| 8/31/10   | SENG CRANE                              | 2010-066     |  |
| 1/5/11    | S & S Shoreline Leasing, LLC            | 32997        | Locomotive Jacks   |
|           |   | 16964        |  |

# Sage Accpac Accounting Software

LAST UPDATED: 12/31/08

## 17800-1

**DATE:** 5/4/06 **Place Purchased:** Red Maple Technologies **Invoice No.:** IN7058/IN7059 **Description:** Accounting Software

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**Schedule 3.17(b)**

**Enforceability and Defaults under the Leases of Tangible Personal Property**

None.

**Section 3.18**

**Condition and Sufficiency of Assets**

None.

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**SCHEDULE 3.19a – REDACTED**

**Schedule 3.19(b)**

**Labor Matters**

None.

**SCHEDULE 3.20a – REDACTED**

**Schedule 3.20(b)**

**Employee Plan Compliance**

The Marquette Rail Employee Stock Ownership Plan, dated November 3, 2005, will be terminated, post Closing. The exact date is undetermined at this time.

**Schedule 3.20(e)**

**Self-Funded, Self-Insured Employee Benefit Plans**

In addition to health insurance benefits (medical, vision, dental and life), Marquette Rail provides a self-funded employee deductible subsidy. Marquette Rail's Blue Cross Blue Shield of Michigan (BCBSM) plan provides for an individual deductible of \$2,500 and a family deductible of \$5,000. The employee is responsible of \$1,000 for an individual and \$2,000 for a family. Marquette Rail funds the difference.

**Schedule 3.21**

**Intellectual Property**

The Trademark License Agreement dated October 28, 2005, as amended by the Amendment to Trademark License Agreement dated January 27, 2012 set forth the rights of the Company with respect to the Marquette Rail logo.

**SCHEDULE 3.22 – REDACTED**

**SCHEDULE 3.24 – REDACTED**

**Schedule 3.25**

**Transactions with Related Parties**

The Company is a party to a Trademark License Agreement, as amended, which is set forth on Schedule 3.21, with Transportation Solutions, Inc., which is a member of Marquette Rail, LLC.

**Schedule 4.6**

**Buyer Government Approvals**

Approval of the Surface Transportation Board.

## Schedule 7.2

### Employees

| <u>Last Name</u> | <u>First Name</u> | <u>Title</u>                            | <u>Department</u> |
|------------------|-------------------|---|-------------------|
| Cecil            | Rick              | President                               | Administration    |
| Giammalva        | Kristine          | Administration Assistant                | Administration    |
| Jany             | Richard W         | General Manager & Vice President        | Administration    |
| Smith            | Allan R           | Director - Business Development         | Administration    |
| Zielke           | Janice            | Manager of Accounting                   | Administration    |
| Carver           | Charles Alan      | Track Inspector / Safety                | Engineering       |
| Chick            | Phil              | Track Maintenance                       | Engineering       |
| Coopshaw         | Jason             | Assistant Road Master                   | Engineering       |
| Davis            | Donald Jeffrey    | Roadmaster                              | Engineering       |
| Homrich          | Kevin F           | Signal Maintainer                       | Engineering       |
| Howe             | Shane A.          | Track Maintenance                       | Engineering       |
| Jany             | Brad              | Temporary Track Maintenance             | Engineering       |
| Knudsen          | Tyler R           | Temporary Track Maintenance             | Engineering       |
| Madsen           | Adam              | Primary Bridge Tender / Track           | Engineering       |
| Miller           | Phillip J         | Part Time Bridge Tender / Track         | Engineering       |
| Niesen           | Dan J.            | Track Maintenance                       | Engineering       |
| Wolf             | Daniel C          | Track Welder Track Maintenance          | Engineering       |
| Brown            | Aaron Judson      | Lead Mechanic                           | Mechanical        |
| Dibble           | Harvey            | Assistant Mechanic                      | Mechanical        |
| Leonard          | David C           | Assistant Mechanic                      | Mechanical        |
| Atteberry        | Sean Michael      | Engineer / Conductor                    | Transportation    |
| Avra, Starr P.   | Starr             | Crew Hauler                             | Transportation    |
| Bosley, Linda    | Linda             | Crew Hauler                             | Transportation    |
| Chevalia         | Kevin T           | Conductor! Engineer Trainee             | Transportation    |
| Dault            | Wayne T, II       | Engineer Conductor                      | Transportation    |
| Erlwein          | Matthew R         | Conductor                               | Transportation    |
| Ferris           | Donald R          | Conductor                               | Transportation    |
| Fongers          | Thomas            | Conductor                               | Transportation    |
| Grace            | David L           | Engineer Conductor                      | Transportation    |
| Heiden           | William E         | Engineer Conductor                      | Transportation    |
| Kowalewski       | Christopher       | Manager of Train Operations             | Transportation    |
| Majerczak        | Steven W          | Conductor                               | Transportation    |
| Nixon            | Blaine E          | Conductor                               | Transportation    |
| Starring         | Linus J           | Engineer Conductor                      | Transportation    |
| Woolworth        | Sean M            | Engineer Conductor                      | Transportation    |
| Wootton          | Kevin             | Manager of Train Operations / Conductor | Transportation    |